

**Caucasus Institute for Peace, Democracy and Development**

# **SECURITY SECTOR REFORM IN GEORGIA**

**2004-2007**

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# Security Sector Reform in Georgia 2004-2007<sup>1</sup>

## Introduction

Although the idea that the main purposes of the political system are safeguarding national interests and security takes its origin in the works of ancient thinkers, it is commonly associated with the process of establishment of the international system of nation states. Essentially, teachings of Niccolo Machiavelli, Thomas Hobbes and John Locke championed the idea of national interests and state as a mechanism of security<sup>2</sup>. But as it can be inferred from the same works by these “founding fathers” of the modern political theory and practical politics, the most painful and controversial problem is “delimiting” the confines of the national interests and security policy for practical purposes. Hobbes tends toward asserting the need for absolute political power and, resorting to terminology of the modern-day discourse, lists religion too among the areas which fall within the competence of institutions that are responsible for national security.<sup>3</sup> John Locke, on the other hand, argues that no faith should be subject to ban from the standpoint of national security, if it does not directly advocate or promote violence.<sup>4</sup>

The security policy and discourse of modern states should also be considered a natural continuation of the tradition to which these classics of democracy and nationalism gave origin. Accordingly, the modern-day academic and political discourse on the security sector and its reforms is a never-obsolete attempt to balance human rights, democracy, nationalism and national security imperatives. Today, experts and analysts working in the fields of defense, strategy, development and democracy are already jointly discussing – and influencing one another – the issues of effectiveness of the security system as a touchstone of the strength of state on the one hand and the developmental as well as democratic transformations – i.e. eternal task of putting the state in service of the individual – on the other.<sup>5</sup>

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<sup>1</sup> The following research covers the events after November 2003 Rose Revolution. The research was finalized in the beginning of 2008. Accordingly, the years of 2004-2007 is the main timetable of the given analysis of post-revolutionary developments in Georgia. However, the research also pays attention to few facts from the years of 2003 and 2008

<sup>2</sup> When defining the notion of state, for example, Thomas Hobbes stressed the factor of power which will be able to protect the members of society from incursions by foreigners or from inflicting damage to one another and thereby to secure (underlined by the author – D.D) them in such sort as that by their own industry and by the fruits of the earth they may nourish themselves and live contentedly. CHAPTER XVII, OF THE CAUSES, GENERATION AND DEFINITION OF A COMMONWEALTH, In Leviathan, By Thomas Hobbes, ebooks@Adelaide, 2007, <http://etext.library.adelaide.edu.au/h/hbbes/thomas/h681/index.html>

<sup>3</sup> To Hobbes, state is Leviathan, in other words, “to speak more reverently, of that mortal god to which we own, under the immortal God, our peace and defence.” Accordingly, it is the “judge of doctrines.” CHAPTER XVII, OF THE CAUSES, GENERATION AND DEFINITION OF A COMMONWEALTH, In Leviathan, By Thomas Hobbes, ebooks@Adelaide, 2007, <http://etext.library.adelaide.edu.au/h/hbbes/thomas/h681/index.html>

<sup>4</sup> “If we allow the Jews to have private houses and dwellings amongst us, why should we not allow them to have synagogues? Is their doctrine more false, their worship more abominable, or is the civil peace more endangered by their meeting in public than in their private houses? But if these things may be granted to Jews and Pagans, surely the condition of any Christians ought not to be worse than theirs in a Christian commonwealth”. John Locke, A Letter Concerning Toleration, translated by William Popple, [http://oregonstate.edu/instruct/phl302/texts/locke/locke2/locke-t/locke\\_tolerat.html](http://oregonstate.edu/instruct/phl302/texts/locke/locke2/locke-t/locke_tolerat.html)

<sup>5</sup> For the need for and essence of the reforms in the security sector, see, for example, *Democratising Security In Transition States*, Editors Katrin Kinzelbach and Eden Cole, UNDP, 2006, Printed by RENESANS, Slovak Republic; *Security Sector Reform and Post-Conflict Peace-building*, Edited by Albrecht Schnabel and Hans-Georg Ehrhart, United Nations Press, 2005; *Understanding and Supporting Security Sector Reform*, Issues, DFID, 2002; *Conflict, Peace and Development Cooperation on the Threshold of the 21st Century*, Development Assistance Committee. Organization for Economic Cooperation and Development 1998; *Military Expenditures in Developing Countries: Security and Development*, DAC, Government of Canada 1998 (Final Report and Follow up to the 1997 Ottawa Symposium); Chris Donnelly, Rethinking Security, NATO Review 2000-2001; Peter J. Katzenstein, ed. *The Culture of National Security, Norms and Identity in World Politics*, Columbia University Press, NY 1996, In: *Norms, Identity and culture in National Security*, Ronald L. Jepperson, Alexander Wendt, and Peter J. Katzenstein:

The attempts to resolve the problem of reforms in the security sector, which usually involves national political systems, are, inter alia, influenced by the classical and modern issues of international security. There is an uninterrupted line of deliberation from the Kantian “perpetual peace”<sup>6</sup> to the present-day “democratic peace” and “cooperative security” theories.<sup>7</sup> The emphasis in these deliberations is again placed on reforming the security sector and policy in a way that would subordinate national interests and accordingly, international relations, to the need for democratization of states and convergence of their sociopolitical values.

An important, if not always conceptualized and direct, source of the present-day discourse on reforming the security sector is the theory of civil-military relations.<sup>8</sup> According to Huntington, these relations are nothing but the institutional level of the military security policy, or a manner in which the policy is formulated and implemented.<sup>9</sup> The point here is the civil control over military forces, the notion which in the European guideline documents was replaced with that of democratic civil control as early as in the 1990’s and which is one of the pivotal issues in reforming the security sector. On the other hand, Moris Janovitz – and not only he – broadened the range of problems in civil-military relations to include the paramilitary groups, domestic security agencies and peacekeeping operations. It can be argued, therefore, that the classical theory of civil-military relations is gradually and smoothly transforming into the present-day discourse of the security sector reform and becoming a central point in it.

And finally, the security policy and system cannot be viewed in isolation from the dilemma which is discussed by Fareed Zakaria in his landmark paper “*The Rise of Illiberal Democracy*.”<sup>10</sup> Democracy as a way of forming the government through elections can be counterproductive if the concept of constitutional liberalism has not gained foothold in society. Fareed Zakaria’s argument is supported by the present-day examples when populist, and ultimately, authoritarian governments have come to power after elections. Accordingly, a politically incorrect question arises whether enlightened authoritarianism is better than elected benightedness.

Arguably, the problem which was outlined by Zakaria is deepening and evolving in the 21st century. A new, or rather, renewed, security challenge has emerged: Both organized criminal groups and fundamentalist forces that are undemocratic by nature might effectively take advantage of the democratic and human rights-based rhetoric to come to power. As for the classical liberal democracies or young governments which follow in their footsteps, they are often tempted into disproportionate use of force. Another dilemma lies in the fact that the classical modern international human rights institutions and mechanisms are essentially powerless in the face of the nongovernmental or paragonovernmental actors which pose the threat at a time when the role of precisely these actors has become considerably more important in the present-day, largely post-modern, security environment. They are confronted only by the traditional, national and regional security sectors. However, this confrontation does not always easily fall within the established patterns of human rights protection.

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<sup>6</sup> Immanuel Kant, *Perpetual Peace: A Philosophical Sketch* [www.mtholyoke.edu/acad/intrel/kant/kant1.htm](http://www.mtholyoke.edu/acad/intrel/kant/kant1.htm)

<sup>7</sup> See, for example, Barry Buzan, Ole Waever, Jaap de Wilde, *Security: A New Framework for Analysis*, Linne Rienner Publishers, London 1998; Module 9 for the year 2001, Publications of the G. Marshall Center for International Relations and Security Studies (in the Russian language).

<sup>8</sup> Its classical origins are to be sought in the theories by Samuel Huntington and Moris Janovitz, which date back to the 1950-1960’s. See Samuel P. Huntington, *The Soldier and the State: The Theory and Politics of Civil-Military Relations*, Harvard University Press, renewed by Samuel P. Huntington, Twelfth Printing 1995; Moris Janovitz, *the Professional Soldier (A Social and Political Portrait)*, The Free Press Glencoe, 1961

<sup>9</sup> Samuel P. Huntington, *The Soldier and the State: The Theory and Politics of Civil-Military Relations*, Harvard University Press, renewed by samule P. Huntington, Twelfth Printing 1995, p. 1

<sup>10</sup> Fareed Zakaria, *The Rise of Illiberal Democracy*, In: Foreign Affairs, November/December 1997

This paper deals with the issues of building and reforming the security sector of the Georgian state, which is undergoing the transition phase, and with some of the challenges which arise in the process and are yet unanswered. The methodological framework is set by the abovementioned theories, analysis of the best practices in the field of the security sector reform, and the spectrum of threats which are internationally recognized and which, in effect, represents a conglomerate of the classical and new threats. The **first section** discusses the definition of the security sector and its inherent parameters and indicators which can be defined within the frame of reference of modern democratic requirements; notes that changes in the nature of the threats and security policy today makes it increasingly difficult to distinguish between the security and law-enforcement sectors; maintains that the main principles of development, operations and reforms in the security sector in democracies are the civil democratic control, transparency and accountability, consideration for the human factor in promoting national interests, adherence to the principles of proportional and appropriate use of force, interagency coordination and supremacy of the law and procedures.

The **second section** is dedicated to the strategic discourse which unfolded in Georgia in 2003-2007 and the security problems facing the country. Despite the general international consensus on the nature of the modern threats, their intensity and specifics are always dependent on the local, that is to say, national situation. In Georgia, for example, organized crime and criminal culture are no less (if not more) important from the point of view of national security than terrorism or environment pollution. This section demonstrates that for countries in Georgia's situation, the line between the security and law enforcement sectors is particularly indistinct. Accordingly, for the next section, that is to say, in order to outline and illustrate the Georgian national security sector map, the second section sets a reference point – the spectrum and nature of the national-level threats as perceived by the security sector actors.

The **third section** maps the security sector of Georgia. On the basis of the definitions of intensity of threats, which are set forth in the preceding section, the institutions which are to react to them are identified and characterized. Accordingly, the absolute majority of policing structures are to be categorized as the security sector institutions, which, perhaps, would not be appropriate in an analysis of the national security sector of any of the Northern European countries. The section describes the significant outcomes of the development and reforms at the individual security institutions and the supreme government agencies which are responsible for policy formulation and implementation in the security sector. The section also gives a brief overview of the qualitative positive changes which make the security sector and policy of the post-revolution period which started in 2003 distinctly different from what existed before.

The **fourth section** contains the analysis of problems which often present themselves in the form of dilemmas and which became manifest in the process of development of the Georgian security policy and security sector. The primary dilemma arises because of the legitimate attempts to change the functionless formats of the management of the country's territorial conflicts, which, on the other hand, escalates the tension in the same conflict zones. The second dilemma: The process of strengthening of the state institutions and reforming the security sector require speed, mobilization of resources, and unpopular decisions (for example, personnel reshuffles). This results in inflexibility of the decision-making style and crudeness of procedures. Informal relations between the country's leaders, team spirit, exceeding formal division of competences, which is characteristic to all revolutions adds to that. As a result, the principles of checks and counterbalances and democratic accountability are jeopardized. The third is inevitable conflict between the national and individual security. This also entails the issues of excessive use of force and walking a tightrope on the verge of violating the principle of supremacy of law when the newly reformed police and security agencies are combating organizing crime and corruption, both of which merit the rank of national security threats in Georgia. However, individual security has two aspects: Protection of law-abiding citizens from criminals and their protection from state. Compared to the pre-revolutionary situation, the progress in the former area is undisputable, if only

because back then, the state was merged with criminal networks. And last but not the least: relations between revolutionary leadership and media were also not free of controversies.

The **fifth paragraph** summarizes the descriptive and analytical aspects of the paper content and proposes to the reader the prospects of and recommendations regarding the reforms in the security sector. The key conclusion is that the young Georgian state, which is exposed to a large number of domestic and international risks and threats, still remains a fragile political system. Democracy in it is not irreversible, and this influences the security sector too. In essence, the processes which are under way in that sector and which reflect the entire sociopolitical and legal transformation in the country, are decisive for the country's future. The reforms of 2003-2007 show that the key problem is balancing the rapid reaction to the threats with strict adherence to the principle of supremacy of law. This is where the objective and systemic threat stems from – the threat of crossing the border between democracy and authoritarianism, when the imperative of speed and urgency becomes the ground of elation over unbalanced political power.



## Security Sector: Essence and Best Practices

Martin Edmonds believes that it is necessary to determine the functions of a security system<sup>11</sup> in order to establish its borders. He therefore identifies the following primary objective of the system/sector and the constituent functions: It is the objective of the national security system to protect the state, its institutions and citizens from all forms of physical threat. The functions of the system/sector include adoption and administration of decisions, operational work, intelligence and consultative activities.<sup>12</sup> Determining the functions, however, is not enough for an accurate definition of the agencies that perform them. The most significant problem here lies in the changing nature of threats and the extent to which a given country is democratic. At the time when Edmonds wrote the work cited here, security policy used to focus on the traditional types of military and political threats. Today, security policy devotes greater attention to organized crime, trade in drugs, trafficking, terrorism and the non-state actors involved in these kinds of activities. A weak state and corruption are believed to be the primary threats to the national security of many countries.<sup>13</sup> It is exactly for this reason that the leaders of democratic countries have promoted a comprehensive understanding of security.<sup>14</sup> It is not so much the armed forces that are required to cope with this spectrum of threats as a strong police and judiciary. The role of informational and educational institutions is also becoming extremely important.

At the same time, the primacy of national interests and power and the focus on defence in international relations are undermined by the concept of the so-called cooperative security whereby accommodation of various national interests requires cooperation and common values.<sup>15</sup>

Security policy is, however, a “panic policy”.<sup>16</sup> It is associated with and linked to restrictions imposed on human rights and democratic processes. The higher the degree of the state’s inclination to the implementation of this kind of a policy and the larger the number of spheres and state institutions that it covers, the more it will be inclined to limit the freedom of citizens. Security policy itself can ultimately turn into a threat. Democratic countries are therefore cautious about making the matters of economy, information, communications, culture and education part of the security system. Meanwhile, undemocratic regimes in different regions and historical periods have cited “national security” requirements to impose bans on cultural ties and activities.

Expansion of the concept of security and the relevant policy sector also produces an analytical problem. According to the systems approach, any system requires an environment from which it can dissociate and to which it can react. Both threats and public expectations are part of a security sector’s environment.<sup>17</sup> Expectations are generated by public and state institutions. If it is decided, for example, that the entire parliament should be considered part of a security sector, the dichotomy of the system and its environment which is essential from the analytical point of view might be lost.

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<sup>11</sup> He does not use the term “sector” but I believe that “system” and “sector” are interchangeable terms in this case. At the same time, “system” sounds rather analytical, while “sector” is more of a normative and political term.

<sup>12</sup> Martin Edmonds, *Armed Services and Society*, Leicester University Press, 1988 p.123

<sup>13</sup> Chris Donnelly writes, for example: In several transition states corruption has increased to a degree that it has become a national security threat. Chris Donnelly, *Rethinking Security*, NATO Review 2000-2001, p.33

<sup>14</sup> German Chancellor Angela Merkel’s speech during the 43rd Conference on Security Policy in Munich on 10 February 2007 ([www.securityconference.de](http://www.securityconference.de)) on growing similarities between the security policies of the European Union and Turkey and the focus on new threats. See also *Security Matters*, Issue 17, Newsletter from the Centre for European Security Studies.

<sup>15</sup> Richard Cohen, Michael Mihalka, *Cooperative Security: New Horizons for International Order*, The Marshall Center Papers, No 3, April 2001.

<sup>16</sup> Barry Buzan, Ole Waever, Jaap De Wilde, *Security, A New Framework for Analysis*, Lynne Rienner Publishers, Inc. 1998, p.34

<sup>17</sup> For the use of the systems analysis in security studies see Martin Edmonds, *Armed Services and Society*, Leicester University Press, 1988

Yet it is impossible to exclude all types of activity directed against the state and the system but open and collective armed action from the focus of attention of the sector that carries out the “panic policy”, i.e. the security policy characterized by prohibitive and extraordinary measures. If corruption or organized crime is threatening to erode the state, the institutions that combat them also become part of the security sector. In order to solve this problem, it is necessary to demonstrate moderation, to abide by the requirements of the rule of law and to respect the so-called human security as much as national security.<sup>18</sup> At the same time, it is necessary to keep in mind the specific national, state, political and cultural traits as we try to determine the parameters of a security policy and the borders of a security sector.

Expansion of the concept of security inevitably leads to an increase in the number of agencies and individuals interested in it. On the one hand, the distinction between the security sector and the legal/law enforcement sector becomes blurred while, on the other hand, an emphasis on the human and societal security prompts the organizations dealing with development issues to become involved in security policy.<sup>19</sup>

The interaction and the distinction between national and human security, as well as between the security, the development and the legal policies or sectors, are often subtle. At the same time, it is difficult to separate them from one another even though this might be necessary for analytical or practical reasons. The concept of “human security” did not exist when the OSCE was formed in 1975 but the Conference on Security and Cooperation in Europe did cover the content of this concept. According to one definition, global warming is linked to the possible changes in the supply and consumption of energy resources from the viewpoint of national security and to the problem of heating in schools from the viewpoint of human security. Human rights are the most important aspect of human security. Security experts believe, however, that speaking the language of security and emphasizing the balance between national and human security is a less confrontational and a more realistic approach than the dichotomy between security and human rights.<sup>20</sup>

It is not only academic studies, national and state acts or political messages that define the meaning of security sector and policy and highlight the need for the introduction of democratic practices in this sphere but also the documents adopted by the OSCE, the Council of Europe and the United Nations. These documents too reflect the complex reality which makes it difficult to come up with a comprehensive definition of the security sector and to make a clear distinction between its military and legal functions. The OSCE Code of Conduct on Politico-Military Aspects of Security that took effect in 1995 says that the control of military, paramilitary and internal security forces as well as of intelligence services and the police is an indispensable element of stability and security.<sup>21</sup>

According to the recommendations of the Parliamentary Assembly of the Council of Europe on democratic oversight of the security sector in member-states adopted in 2005, the bodies and forces responsible for ensuring security have a variety of roles. At domestic level, it is their job to preserve law and order, protect the security of the State, persons and property, safeguard democratic institutions

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<sup>18</sup> The human security policy stipulates that national security threats foremost arise when the governmental and security institutions fail to protect the citizens' rights, and/or even treat them in a predatory manner. At the same time, developmental issues such as unemployment, problems of nutrition, clean water and sanitation, become relevant for security. In: *Human Security. Safety for People in a Changing World*, Canadian Department of Foreign Affairs and International Trade, April 1999

<sup>19</sup> Conferences dedicated to developmental issues increasingly address the subject of best practices in building security institutions, the transformation of roles and missions of defense and security agencies, civil control and the development of a national strategy. In: *Conflict, Peace and Development Cooperation on the Threshold of the 21st Century*, Development Assistance Committee. Organization for Economic Cooperation and Development 1998; *Military Expenditures in Developing Countries: Security and Development*, DAC, Government of Canada 1998 (Final Report and Follow up to the 1997

Ottawa Symposium)

<sup>20</sup> GFSIS-Caucasus Policy Institute “Human Security Conference – Focus on Georgia” Tbilisi, 9-10.02.07

<sup>21</sup> OSCE Code of Conduct On Politico-Military Aspects of Security, VII, 20 In: *Democratising Security In Transition States*, Editors Katrin Kinzelbach and Eden Cole, UNDP, 2006, Printed by RENESANS, Slovak Republic, p. 86

and procedures and ensure the peaceful coexistence of different sections of the community. The document also notes that the judiciary plays a crucial role in safeguarding security because it can punish any misuse of exceptional measures in which there may be a risk of human rights violations.<sup>22</sup> Yet this recommendation leads to ambiguity in terms of the establishment of the security sector's borders since it emphasizes later that legislation should distinguish between security and intelligence services on the one hand, and law enforcement agencies on the other.<sup>23</sup>

The ambiguity that stems from the complex nature of threats and the peculiar traits of security policies of different countries increases, if it leads to the elements of the overlap between defence and law enforcement. As we have noted, this complexity is also reflected in the official documents of international organizations. The Code of Conduct for Law Enforcement Officials adopted by the UN General Assembly in 1977 is equally noteworthy in this respect. The document says that law enforcement officials exercise police powers, especially the power of arrest. In countries where police powers are exercised by military authorities or by security forces, the definition of law enforcement officials also includes officers of such services.<sup>24</sup> In situations described by this document, the military and the security agencies can actually be viewed as part of the law enforcement sector rather than vice-versa.

Distinguishing between the functions of police and military was considered to be an imperative when the theory of civil-military relations was developed in the 1950's. The tradition remains popular to a significant extent. It is believed that the use of a weapon by a military should inflict as much damage on the adversary as possible, while a police officer should only use a weapon in cases of extreme necessity and in a limited way. The training that a police officer and a military receive and the doctrines they follow must therefore be completely different from each other. However, Moris Janovitz's concept of Constabulary Forces emerged also in 50s, which was an indication that the change in the nature of war required enhancement of the policing and diplomatic skills among the military.<sup>25</sup>

Yet Janovitz,<sup>26</sup> as well as the more radical proponents of a distinction between the military and the policing functions, are worried by a complete amalgamation of roles and functions in the security sector. It is detrimental to the professionalism of every agency linked to the sector. At the same time, one of the most important threats is that the extreme nature of the military and the intelligence professions could spread to the entire sector including its civil and police components. As it was noted at one of the representative meetings, devoted to the security sector reform, if all agencies of the security sector focused on the fight against terrorism, it could lead widespread violations of the rights of citizens and state terrorism.<sup>27</sup>

The assumption that the actors of security sector operate in the law enforcement sphere, as well as the defence and the intelligence spheres, is rarely challenged today.<sup>28</sup> A number of influential scholars and international organizations consider special legislative committees, civilian ministries and special agencies of the executive branch to be part of the sector along with the financial management services and the civil society organizations that analyze security policy or deal with the relevant complaints. There are also

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<sup>22</sup> Parliamentary Assembly of the Council of Europe Recommendation 1713 (2005)

Democratic Oversight of the Security Sector in Member States, 2 and 6. In: *Democratising Security In Transition States*, Editors Katrin Kinzelbach and Eden Cole, UNDP, 2006, Printed by RENESANS, Slovak Republic, p. 91

<sup>23</sup> Ibid, II *Police. b.* p. 93

<sup>24</sup> *UN Code of Conduct for Law Enforcement Officials* (UN General Assembly, 17 December 1977)

*Article 1, Commentary*, In: *Democratising Security In Transition States*, Editors Katrin Kinzelbach and Eden Cole, UNDP, 2006, Printed by RENESANS, Slovak Republic, p. 97

<sup>25</sup> Moris Janovitz, *The Professional Soldier (A Social and Political Portrait)*, the Free Press Glencoe, 1961

<sup>26</sup> Ibid, p.419

<sup>27</sup> *Democratising Security In Transition States*, Editors Katrin Kinzelbach and Eden Cole, UNDP, 2006, Printed by RENESANS, Slovak Republic, p.9-14

<sup>28</sup> Ibid, p.17

the legal or the law enforcement institutions like judiciary, ministry of justice, prisons, prosecutor's offices, committees and bodies preoccupied with the protection of human rights. Structures that do not have an official status, such as a liberation army, a party militia or a private guard company are often viewed as parts of the security sector too.<sup>29</sup>

Some authors have tried to identify the core of the security sector, which includes army, gendarmerie and other paramilitary forces, police, customs service and a number of civilian agencies responsible for security.<sup>30</sup> It is difficult to come up with a more comprehensive, relevant and accurate definition. It demonstrates the diversity of the sector and the need for separation and autonomy of roles and functions inside it. This is a kind of "unity in diversity" which does not and cannot eliminate ambiguities. It stems from the modern political culture and the imperativeness of democratic reforms.

The cultural aspect of security policy is reflected in the fact that, while war was believed to be a virtue of the state in the 19th century, it is viewed as a necessary evil at best today due to the changing international norms and domestic factors.<sup>31</sup> Added to this is the emphasis on human security which also stems from this to some extent. An individual is no longer considered to be a mere subject or a citizen obliged to defend the interests of the state. Webber's definition of the state whereby it possesses the monopoly of legitimate means of violence on a given territory is not enough in the modern political discourse.

Albrecht Schnabel and Hans-Georg Ehrhart have suggested that the essence and the consequences of the changes in the security culture are linked to the emergence of post-modern armed forces. In their opinion, the contemporary challenge that the armed forces face stems from the fact that traditional sentiments like motherland and honour have come under pressure from the values of liberty, democracy and justice; along with combat objectives, missions other than war – those of a police officer, a peacekeeper, a diplomat and a social worker – are becoming increasingly important in the life of the post-modern military; there is a growing need for international legitimacy for any kind of military intervention; armed forces are increasingly multi-national; the revolution taking place in the military field changes the forms of war and intervention; privatization of violence is taking place and the nature of the security dilemma is therefore changing too.<sup>32</sup>

As the concept of security expands, democratic countries and the countries that aspire to become democratic inevitably face the complex objective of ensuring democratic management of the security sector and implementing the necessary reforms. The question of democratic management/reform of the security sector stems from democracy's classical principle of separation of powers to the same extent as it stems from the aforementioned processes of contemporary evolution of the concepts of security and security policy. The theory of civil-military relations which has become a classic now essentially advocates the most significant of the modern requirements of the sector's reform – the need for a civil control over security or defence forces – and aims to determine the best possible forms of this control. For their part, contemporary analysts studying security sector reform constantly go back to the topics and questions discussed in the theory of civil-military relations.<sup>33</sup>

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<sup>29</sup> *Security System reform and Governance: Policy and Good Practice*, A DAC Reference Document. Paris: OECD 2004, pp.16-17 In: Albrecht Schnabel and Hans-Georg Ehrhart, eds., *Security Sector Reform and Post-Conflict Peace-building*, United Nations Press, 2005 pp. 6-7

<sup>30</sup> Albrecht Schnabel and Hans-Georg Ehrhart, eds., *Security Sector Reform and Post-Conflict Peace-building*, Edited, United Nations Press, 2005, pp.7-8

<sup>31</sup> Ronald L. Jepperson, Alexander Wendt, and Peter J. Katzenstein, *Norms, Identity and culture in National Security*, In: Peter J. Katzenstein, ed., *The Culture of National Security, Norms and Identity in World Politics*, Columbia University Press, NY 1996, p. 36

<sup>32</sup> Schnabel and Hans-Georg Ehrhart, eds., *Security Sector Reform and Post-Conflict Peace-building*, United Nations Press, 2005, pp. 3-4

<sup>33</sup> However, some experts of civil-military relations do not support the idea of replacing this theory altogether with the "security sector management" concept as they consider the latter to be too diffuse for their analytical objectives. Hans Born, Marina Caparini, Karl W. Haltiner and Jurgen Kuhlmann, eds., *Civil-Military Relations in Europe Learning from Crisis and Institutional Change*, Routledge, 2006, p. 5 In essence, this diversity of views is another demonstration of the analytical and practical ambiguity of the process of defining the "security sector".



Along with analytical and theoretical works, the normative acts and the recommendations adopted by the aforementioned international organizations can also serve as guidance for security sector management. Among these, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted by a special UN congress in 1990 stand out for their emphasis on human security. According to these principles, while an assault on a police officer is believed to be a threat to the stability of the society and it is sometimes necessary to use force against prisoners, the states should come up with clear rules for the use of force by law enforcers and follow those rules even during the state of emergency and political instability.<sup>34</sup>

It is essential to the democratic management and/or reform of the security sector to enhance the professionalism of the people in uniforms and those carrying weapons and to increase their sensitivity to human rights. However, along with professionalism which refers both to specific skills and ethics, it also implies accountability of the power-wielding bodies, maximum transparency of their activities and introduction of effective mechanisms that will make it possible for the civil authorities and the public to control them. The OSCE Code of Conduct on Politico-Military Aspects of Security and the recommendations of the Parliamentary Assembly of the Council of Europe cover these aspects of management and reform. The requirement of democratic control over various security agencies which is believed to be a necessary element of stability and security is a key provision of both documents.<sup>35</sup>

Based on the opinions that have been discussed, we may conclude that, on the one hand, the security sector comprises military, paramilitary, intelligence and, in some cases, police forces but, on the other hand, both state and non-state civil bodies involved in the formulation of the security policy and oversight of its implementation are becoming its part too. It is the latter segment and the optimization of its role that determine how democratic civil control is.

It is possible to say that, along with other factors discussed earlier (changes in the nature of threats and security culture), the expansion of the sector's borders was triggered by the need for control over its operation and the aspiration to render both internal and external security policies more democratic. This is the reason why "unusual" organizations such as human rights committees, ombudsman's offices and specialized NGOs have become its parts.<sup>36</sup> This is a pointer as to where we can find indicators for best democratic practice of security sector management and control. Best democratic practice implies that the agencies responsible for security and the operative bodies of the state must be required to respect the principles of the rule of law and must not be allowed to arbitrarily violate human rights. There is also a requirement to ensure that the security sector promotes a peaceful settlement of conflicts and the establishment of peace. This should be the emphasis of security sector reform in societies divided by war.<sup>37</sup> Consequently, multiple civil institutions must be focused on the rules of conduct and doctrines of army, police and other armed bodies, the implementation of those rules in practice, the allocation of funding to the sector and its action policy.

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<sup>34</sup> UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Eight UN Congress on the Prevention of Crime and the Treatment of Offenders, 27 August – 7 September, 1990) In: Katrin Kinzelbach and Eden Cole, ed., *Democratising Security In Transition States*, UNDP, 2006, Printed by RENESANS, Slovak Republic, p.103

<sup>35</sup> OSCE Code of Conduct On Politico-Military Aspects of Security; Democratic Oversight of the Security Sector in Member States, Parliamentary Assembly of the Council of Europe Recommendation 1713, In: Katrin Kinzelbach and Eden Cole, ed., *Democratising Security In Transition States*, UNDP, 2006, Printed by RENESANS, Slovak Republic, p.86-91

<sup>36</sup> The "security sector" includes "all those organizations that have the authority to use, or order the use of, force or threat of force, to protect the state and its citizens, as well as those civil structures that are responsible for their management and oversight", Chalmers, Malcolm, *Security Sector reform in Developing Countries: An EU Perspective..* 2000. London/Ebenhausen: Saferworld and Conflict Prevention Network, January, p.6, In: Schnabel and Hans-Georg Ehrhart, eds., *Security Sector Reform and Post-Conflict Peace-building*, United Nations Press, 2005, p. 6.

<sup>37</sup> The roles of security forces – external and internal – and the process of security sector reform are key ingredients of the post-conflict peacebuilding agenda, Schnabel and Hans-Georg Ehrhart, eds., *Security Sector Reform and Post-Conflict Peace-building*, United Nations Press, 2005 p.3

The points raised above show what is considered to be the necessary and best practice in the field of security sector management and reform. However, specific aspects and details of implementation are as important as the general principles. There are two essential points: Practical recommendations and requirements should be both realistic and effective.

It is a universal rule that an elected government and parliament are to make decisions on matters like assessment of threats, strategic planning, rules for the use of force, procurement and appointment of high-ranking officials. At the same time, civilian authorities should take into consideration the professional needs of the military. These norms are considered to be a prerequisite to the accession to NATO today. All of this requires both a clear legislative framework and development of civil expertise in security affairs. The process of establishment of democratic civil control is, however, influenced by factors like legacy from the past and the peculiar traits of government institutions.

Some authors believe that, along with the aspiration for transparency, the process of security sector management and reform is also influenced by the aspiration for power and effectiveness, as well as unique cultural traits.<sup>38</sup> Institutional and personal conflicts are therefore inevitable in any political system. A consolidated democracy is “lucky” because these conflicts are resolved in such manner there that the system (the security sector in this case) does not lose its legitimacy and does not disintegrate. However, it is clear that, since management and reform are carried out by the people and for the people, a mere knowledge of the international norms of democratic control will not be enough for succeeding in practice. Moreover, democratic management of the security sector is a kind of a “container” concept composed of incomplete approaches and ideal types. No country is capable of implementing this concept to a full extent.<sup>39</sup> At the same time, along with preventing the military from “intruding” into politics, protecting the military from micro-management carried out by politicians is also a major and a permanent problem.<sup>40</sup> Civil control should not imply civil supremacy in every situation and on every issue, particularly in the contemporary security environment which requires a mixture of civil and military expertise.<sup>41</sup>

Naturally, the objective of reforming the security sector is different in democratic countries and the countries in democratic transition. The latter group encounters more problems when it tries to introduce modern mechanisms of transparency, accountability and democratic participation and these problems are more serious too. A fundamental problem stems from the flaws of political culture and the lack of expertise.

The security sector of a democratic country should serve the entire society.<sup>42</sup> The main objectives of security sector reform therefore include prevention of instances of corruption and violation of human rights, immediate reaction to any instances of this kind, explanation of the security policy and the parameters of the sector’s funding to the public and conduct of informed debates on these subjects. Along with parliament, media and NGOs are also to play an essential role in all of this since accountability without transparency is an obsolete concept.<sup>43</sup> Transparency of the security sector or any other sector is achieved through public participation. Various oversight bodies should be manned with the help from civil society institutions. The role of local nongovernmental institutions is particularly relevant because the elites of some countries are not interested in either transparency or accountability while

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<sup>38</sup> Hans Born, Marina Caparini, Karl W. Haltiner and Jurgen Kuhlmann, eds., *Civil-Military Relations in Europe Learning from Crisis and Institutional Change*, Routledge, 2006, pp. 238-240; The point is reiterated throughout the text.

<sup>39</sup> Ibid, p.236

<sup>40</sup> Ibid, p.253

<sup>41</sup> A roundtable discussion for NGOs organized by NATO experts, Information Centre on NATO, Tbilisi, 9 May 2007.

<sup>42</sup> Albrecht Schnabel and Hans-Georg Ehrhart, eds., *Security Sector Reform and Post-Conflict Peace-building*, United Nations Press, 2005, pp 6-7

<sup>43</sup> Katrin Kinzelbach and Eden Cole, EDS., *Democratising Security In Transition States*, UNDP, 2006, Printed by RENESANS, Slovak Republic, p 36

external actors often refrain from providing countries that are implementing reforms with long-term support in the transformation of the security sector.<sup>44</sup>

A mere permission by the political elite, however, will not be enough for an effective involvement of NGOs and media in the security sector reform. It is equally important to generate the ability of constructive dialogue and criticism among the representatives of nongovernmental institutions, i.e. to enhance their professionalism. According to both the governmental and the nongovernmental participants of the security sector reform in Latvia, it is necessary to collaborate on a regular basis in order to ensure that NGOs understand the complexity of processes taking place in the sector and are able to explain it to the public. On the other hand, while it might be easy to voice criticism, it is difficult to come up with constructive proposals. Governmental institutions might be formed in a matter of months but it takes years to build an energetic and unbiased civil society. Corruption and nepotism are not confined to the government in young political systems in democratic transition.<sup>45</sup>

The role of MPs in the security sector reform is clear: Together with the judiciary, they need to safeguard the rule of law. Again, it is not simply knowledge that is required here but also political will and mutual respect between the majority and the opposition. As for the knowledge, it cannot be reduced to technical matters. A number of studies have shown that many countries in transition are yet to overcome the view that security only implies defence against external foes. They have been either unable to understand the concept of human security or unwilling to recognize it. Consequently, the parliaments of new democracies are often not prepared to exercise real democratic control.<sup>46</sup>

Even though every country is familiar with the problems of security sector reform, both politicians and analysts tend to focus on new democracies or countries in transition. Particular attention is paid to the so-called weak states and the societies divided by conflict. It is believed that a reform of security agencies is essential to the establishment of both a negative (lack of outright violence) and a positive (creation of conditions for justice and security) peace. This implies transformation of military, paramilitary and police forces into legitimate and democratic bodies and actors.<sup>47</sup>

To sum up, it is possible to say that the democratic standards of security sector management and reform imply the traditional principles of the rule of law and human rights; provision of human security; the well-known principles of good governance such as accountability, transparency and participation. All of this should ultimately result in the establishment of democratic civil control over the operative agencies. At the same time, the dialectics of systemic unity and functional separation of the sector's armed bodies is noteworthy. The point here is the necessity of the compartmentalisation of the military, the security and the special services and the police bodies form each other while the agencies continue to collaborate and each of them is subject to democratic oversight exercised according to a single principle and a high standard.

It is believed that in the countries which collaborate closely with the relevant international governmental and nongovernmental organizations the process of security sector reform is moving ahead through the "internalization" of the universal democratic norms. Until recently, Georgia was mentioned among these countries too.<sup>48</sup> However, since three socio-political variables – knowledge, will and culture – play a major role in the establishment of the aforementioned standards, the process is never easy and linear.

<sup>44</sup> Albrecht Schnabel and Hans-Georg Ehrhart, eds., *Security Sector Reform and Post-Conflict Peace-building*, United Nations Press, 2005, p. 9

<sup>45</sup> Civil Society Involvement in Euro-Atlantic Integration Process. Latvian-Georgian roundtable discussion. Tbilisi, 18 April 2007.

<sup>46</sup> Katrin Kinzelbach and Eden Cole, EDS., *Democratising Security In Transition States*, UNDP, 2006, Printed by RENESANS, Slovak Republic, pp 9-14; pp. 35-36

<sup>47</sup> Albrecht Schnabel and Hans-Georg Ehrhart, eds., *Security Sector Reform and Post-Conflict Peace-building*, United Nations Press, 2005, pp. 4-5

<sup>48</sup> Katrin Kinzelbach and Eden Cole, eds., *Democratising Security In Transition States*, UNDP, 2006, Printed by RENESANS, Slovak Republic, p.37

The intensiveness and specific character of the threats that individual national security sectors encounter in practice are equally important.

In order to cope with new threats and challenges, the security sector of any country needs correct and workable laws, appropriate training and good and reliable communication between agencies. However, just like the variables of knowledge, will and culture, threats and challenges create the kind of a security and political context that hardly allows a standardized or a normative approach.<sup>49</sup>

The Economist magazine has suggested that democracy is a slippery concept, noting that what matters more than elections is who counts the votes, who selects candidates and who formulates questions to be put to the vote. The spirit of the public and the presence of independent institutions are essential. For example, democracy could be a recipe for catastrophe during national self-determination. In guaranteeing good government, “democracy” is the wrong tool: a hammer in place of a screwdriver.<sup>50</sup> One of the 21st century’s security paradoxes is the fact that nonliberal and undemocratic forces are able to capitalize on elections and the concept of human rights, while liberal and democratic forces become confused and often resort to excessive use of force and not-so-democratic practices when confronting non-state actors who pose a threat to national security. The process of security sector reform in Georgia represents an interesting example of this. While demonstrating that the principles of democracy should never be neglected, the example also shows that it is necessary to keep the specific environment in mind when we endorse these principles or develop the relevant recommendations.

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<sup>49</sup> *Countering Terrorism and Drug Trafficking*, a conference organized by the National Security Council and TAIEX, speech by George Katsirdakis.

<sup>50</sup> *Down with democracy*, Europe.view, Dec 6th 2007, Economist.com



## Strategic discourse and security problems in Georgia – principles for defining sector

In order to be able to determine the parameters of the Georgian security sector and list its agencies, we need to take into account the vagueness of the distinction between security and law enforcement, as well as the nature of modern threats. The latter includes both universal and uniquely Georgian components. The complexity of the matter and the subjectivity<sup>51</sup> of the concept and the sense of security certainly make it impossible to draw a perfect picture. The picture given below will therefore be based on the author's view of the vital challenges facing Georgia and will contain a description of the structures and the government's steps that are related to the relevant range of challenges. It is also important that the analysis refers to the events of 2003-2007, i.e. the period of time since the Rose Revolution. These events are too recent and even incomplete and hence one cannot make any comprehensive and fully informed statements about them.

During the period of time between the declaration of independence by Georgia and November 2003, the most prominent traits of the country's security sector were as follows: Diversity of agencies, lack of coordination between them, lack of clarity in the security policy including the absence of a national security concept. Civil control was at times characterized by a complete confusion of military and civil roles. At other times, it was becoming subjective as individual politicians tried to secure personal rather than state control over the armed structures. Military/paramilitary formations that were completely independent from the central government operated in some of the country's provinces. Added to this were the strength of organized crime, rampant corruption and a constant lack of funding in state agencies.<sup>52</sup>

There were some irreconcilable trends in the Georgian security policy in 2000-2003. On the one hand, corruption turned into a national threat. Development of an anti-corruption strategy and specific plans began. The US Train and Equip Program aimed at forming Western kind of light infantry battalions was launched. On the other hand, the police continued to behave in a lawless manner and was only "balanced" by the growing influence of crime kingpins. The elderly president, Eduard Shevardnadze, who was surrounded by an extremely diverse entourage, spoke about the benefits of integration with NATO at times though little was done to establish the NATO standards in the country. The government essentially could not or did not follow the recommendations of the International Security Advisory Board.<sup>53</sup>

At the final stage of his rule, Shevardnadze ended up where he had taken off: Instances of insubordination of the military. In 1992-1994, people in uniforms had divided the country into their own zones of influence. The situation began to stabilize in 1995 when the military and paramilitary groups returned to barracks. However, in May 2001, when journalists asked why the individuals who had started a revolt in a military unit had escaped punishment, Shevardnadze responded with a rhetorical question: Are we a normal state?<sup>54</sup> Ultimately, the revolutionary outcome of November 2003 events was made possible,

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<sup>51</sup> The emphasis on the ambiguity and subjectivity of security implies that threat and risk are a matter of perception and sense rather than objective reality. See Barry Buzan, Ole Waever, Jaap de Wilde, *Security: A New Framework for Analysis*, Linne Rienner Publishers, London 1998; Also, Arnold Wolfers, *National Security as an Ambiguous Symbol*, International Relations Theory: A Chrestomathy, Institute of Civil Initiatives, Tbilisi 2004.

<sup>52</sup> Davit Darchiashvili, *Politicians, Soldiers, Citizens: Analysis of Georgia's National Security and Civil-Military Relations*, Tbilisi State University, 2000.

<sup>53</sup> The board was formed in 1998 following a proposal by the chairman of the Parliamentary Committee on Defence and Security. The recommendations included adoption of a national security concept, separation of the Defence Ministry's and the General Staff's responsibilities, integration of various armed structures, separation of the police and defence functions and so on. Most of these recommendations were not implemented until the 2003 revolution.

<sup>54</sup> Shevardnadze did not punish the rebels as he decided that he had to be careful in dealing with the army given that the public was angry over the social and economic situation. See Davit Darchiashvili, *Georgian Defense Policy and Military Reform*, in *Statehood and Security: Georgia after the Rose Revolution*, Edited by Bruno Coppieters and Robert Legvold. Tbilisi, 2006, p.183

among other things (estrangement from the civil society and the media against the background of endemic corruption, rigging of the parliamentary election), by the problems of civil-military relations.<sup>55</sup>

The country's lack of a clear strategic course stemmed from both internal (a high level of corruption coupled with a low level of professionalism) and external factors. Shevardnadze wanted to move closer to the West but was constantly afraid of angering Russia. This was reflected in the only official strategic document of his government – the Military Doctrine adopted in 1997. The document was written in a Soviet style and focused on the country's strategic course rather than the principles for the training of armed forces. However, it hardly contained any specifics. It did not reflect the aspiration to join NATO and did not say anything about the Russian military bases stationed in the country either.<sup>56</sup> Although an agreement with Russia on the withdrawal of the bases was reached with the help from the West in 1999, Russia was trying to delay the withdrawal process as much as possible and the Georgian president did not react in a particularly blunt manner. However, it is possible to suggest that the weakening of Shevardnadze's pro-Western aspirations in the later years of his presidency could also have been the result of the West's anger over the slowdown of democratic processes inside the country. Shevardnadze wanted to survive but the West was no longer interested in this due to the rampant corruption and crime in the country.<sup>57</sup>

Saakashvili's election as president was followed by a wave of reforms in the security sector. The aforementioned group, the International Security Advisory Board, wrote in its final report in 2006 that most of its recommendations had been implemented.<sup>58</sup>

Drafting and adoption of strategic documents was among the important developments that took place in the security sector after 2003. The security sectors of democratic countries usually have a security concept or strategy. This is important in three ways. First, it serves as the country's business card on the international stage. Second, it makes it possible to coordinate the activities of different government agencies. Third, it is a mechanism for conducting a dialogue with voters over security issues. It usually covers the following three questions: What are the country's most important values and interests? What kinds of threats do they face? How does the country intend to neutralize those threats? As we have said, the failure of the pre-revolution regime to adopt such a guidebook was a sign of its vulnerability. This kind of a document was adopted and publicized in 2005.

The Georgian National Security Concept was, in essence, developed, adopted and publicized in accordance with the recommendations of international experts. At a certain point, representatives of NGOs and academic circles were involved in the discussion of the concept along with the National Security Council staff and other representatives of the government. The Georgian parliament later approved the text through a resolution.

According to the Georgian National Security Concept, the country's fundamental values include independence, freedom, democracy, the rule of law, welfare, peace and security. It has to be noted that peace was deliberately included on the list ahead of security following a debate. The text specifies the more pragmatic national interests such as restoration of territorial integrity, establishment of a civil accord, preservation of the nation's unique identity and fulfillment of the country's transit function. It is possible to say that all of this fits into the security discourse of democratic countries. The list of

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<sup>55</sup> Ibid, p.194

<sup>56</sup> The fear of angering Russia was also essentially believed to be the reason why a national security concept was never adopted under Shevardnadze. Davit Darchiashvili, *Politicians, Soldiers, Citizens: Analysis of Georgia's National Security and Civil-Military Relations*, Tbilisi State University, 2000, pp 155-216; a new document that was titled "Georgia and the World: A Vision and Strategy for the Future" and had been drawn up with the help from foreign experts was published in 2001. It was written in the form of a concept but its status remained unclear under Shevardnadze. See Davit Darchiashvili, *Georgian Defense Policy and Military Reform*, in *Statehood and Security: Georgia after the Rose Revolution*, Edited by Bruno Coppieters and Robert Legvold. Tbilisi, 2006, p.190

<sup>57</sup> For information on the strengthening of pro-Russian attitudes in the later years of his presidency, see Ibid. p.192.

<sup>58</sup> *ISAB Report 2006*, 15 February 2006,

threats, risks and challenges is also more or less specific and adequate and includes conflicts on the country's territory and violation of its territorial integrity, international terrorism, transnational organized crime, corruption and inefficient system of governance, the Russian bases and social, environmental and energy challenges. The main directions of the security policy which is aimed at neutralizing the threats and challenges are also specified. These include strengthening of the state's democratic institutions, enhancement of defensive potential and the course of integration with the Euro-Atlantic structures. The United States, Ukraine and Turkey are identified as strategic partners. A certain amount of attention is devoted to the need for integration and cooperation in the Black Sea region.

This means that the post-revolution government was essentially able to clearly show the priorities of its domestic and foreign policies, as well as its vision regarding the direction and the regional context of the country's future development. Following a debate, it was decided to describe the conflicts that have arisen on the country's territory and have ethnic implications as "supported" rather than "instigated" by external forces. This was done in order to acknowledge the existence of local causes and actors in these conflicts. The fact that the term "Georgian people" was replaced with the "people of Georgia" in the text is also important in terms of promotion of the sense of citizenship and multi-ethnic consolidation.

In general, the text reflects a wide understanding of security and sensitivity to both human and cooperative security. The concept underscores the fundamental principles of security sector management such as public participation, provision of aid to civilian authorities by armed forces in dealing with the consequences of emergencies and democratic civil control. However, it has to be noted that, compared to similar documents adopted in the West, the Georgian National Security Concept devotes an excessive amount of attention to economic and social issues like traditional sectors of industry and tourism. Also, it would be desirable to distinguish between the concepts of threat, risk and challenge more clearly since each of these requires a different level and degree of reaction.<sup>59</sup>

The list of strategic documents devoted to security that have been adopted since the 2003 revolution is not limited to the concept. Intensified communication with the NATO and EU bodies contributed to the progress in this area that was required in order to promote the culture of strategic thinking and to manage and reform the security sector. The nature of these communications was determined by the strategic documents that were developed together with representatives of the aforementioned institutions: NATO's Individual Partnership Action Plan (IPAP) and the EU's European Neighbourhood Policy Action Plan (ENP AP). These were adopted in 2004 and 2006 respectively.

Neither document is limited to the matters of security sector and policy. For example, chapter one of the IPAP is devoted to general political issues and democratization. At the same time, the question of defence system reform is central to the IPAP since the traditional problems of security are NATO's focus. The European Neighbourhood Policy Action Plan which focuses on the reinforcement of the rule of law and development of cultural and economic ties with the EU also covers settlement of conflicts and Georgia's possible contribution to the EU defence and security policy.<sup>60</sup>

One the whole, these documents are frameworks for strategic development and indicators of a vector rather than actual strategies. They are general lists of Georgia's commitments and a promise by Western institutions to aid the country in honouring these commitments. Their implementation is supposed to bring the country's security sector and the entire political system closer to the Euro-Atlantic models. For example, the IPAP which was adopted in 2004 included the commitment to adopt a national security

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<sup>59</sup> See *The Georgian National Security Concept*, the publication prepared by the Georgian Parliament Committee on Defence and Security, Tbilisi, 2005.

<sup>60</sup> For example, according to this document, cooperation on the foreign and security policy is one of the priority areas. The document highlights "enhancement of cooperation between the EU and Georgia in the area of foreign and security policy, including European Security and Defense Policy". It also says that "Georgia may be invited, on a case by case basis, to align itself with EU positions on regional and international issues". European Neighbourhood Policy, European Union-Georgia, Action Plan. The European Commission Delegation to Georgia, p.8.

concept.<sup>61</sup> As we have said, this commitment was fulfilled in 2005. At the same time, these framework documents have been updated on a regular basis.<sup>62</sup> Moreover, the framework action plans reflected both the ongoing reforms and the specific strategies that were being developed in various sectors with the help from Western experts. The ENP AP which focuses on the rule of law was signed in 2006. However, the Georgian criminal justice system reform strategy which is a guide for the ongoing reforms in the legal sphere was developed with the assistance of an EU mission, the so-called EUJUST THEMIS and was signed by the Georgian president in 2005. The ENP AP identifies this very strategy as one of the guides for the measures to be implemented in the legal sphere.<sup>63</sup>

The Strategic Defence Review should be given particular attention as far as the documents that determine and reflect the nature of the security sector reform are concerned. The process of development and discussion of the SDR ended in November 2007 when the president signed it. Representatives of academic circles were involved in the process, particularly at the final stage. Adoption of this document was one of the country's commitments under the NATO IPAP. The SDR summarizes the strategic documents of the defence sphere that have been developed by the government (the National Military Strategy, the Threat Assessment Document and the annual Minister's Vision) and the relevant laws (the law On Defence Planning). On the basis of this, the review describes the present situation in the armed forces and the plans for the future development. The horizon for force planning is extended to 2015. The extensive document is essentially the first capabilities-based attempt to institutionalize the process of reviewing and planning the structure of forces. The introductory part of the document says that using a capabilities-based approach is consistent with NATO defense planning practices, and improves Georgia's ability to adapt its force structure to meet the changing nature of national, regional and global threats.<sup>64</sup>

We will get back to the content of the SDR later on as it is a useful source for the description of the Georgian security sector. As for the establishment of landmarks for the security sector and policy, it is worth noting that the document emphasizes that, given the limited resources, it is necessary to ensure that the military forces prepare for two scenarios of threats at the same time. A large-scale invasion is identified as the most dangerous scenario in the short to medium term, while a crisis in the conflict regions is highlighted as the most likely one. In the long term, conflict spillover from the North Caucasus is described as the worst case scenario while international terrorism is said to be the most likely one. Consequently, a matrix of variables is drawn up with scenarios and response measures – the functional categories for which the military structures need to prepare. These include command and control, intelligence and early warning, maneuver, fires, force protection, sustainment, coordination, training and education.

Another thing that is important in terms of understating the essence of the SDR is the fact that it highlights the need for inter-agency cooperation. This is largely a Western standard and an imperative of security sector management and reform. The document refers to the positive impact of the Finance Ministry's transition to the Mid-Term Expenditure Framework system in 2007 on defence planning and improvement of forms of collaboration between the Defence Ministry and the Interior Ministry. Specifically, the latter refers to the fact that the Defence Ministry is to play a leading role in defence planning which, according to the 2006 law On Defence Planning, is viewed as an interagency process. For its part, the Interior Ministry assumes a leading role in dealing with domestic threats whether it is terrorism or something else. The Defence Ministry is expected to play a support role to the Interior Ministry in such cases.

According to the SDR, the interagency commission that prepared recommendations concerning common logistic support for the Navies of both ministries is an example of how the coordination of activities of the two ministries works in practice. It is also noted that a special interagency commission will monitor the implementation of the SDR.

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<sup>61</sup> *Individual Partnership Action Plan, 2004-2006, NATO*. The 24 Saati newspaper, one-time supplement.

<sup>62</sup> The IPAP was updated in 2007. A one-year strategy for the implementation of the first stage of the ENP AP was also drawn up. Interview with the minister of state for European and Euro-Atlantic integration, 31 May 2007.

<sup>63</sup> Ana Dolidze. *Judicial Reform*, European Neighbourhood Policy and Georgia, analysis by independent experts. Tbilisi 2007, p.6

<sup>64</sup> *Strategic Defence Review*, draft, received by the author from the MOD in June 2007



The SDR notes that the introduction of the Planning, Programming and Budgeting System (PPBS) is particularly important for the promotion of internal coordination and establishment of a planning cycle in the Defence Ministry. The ministry's staff developed the system with the assistance of experts from the Netherlands in 2007. The PPBS describes the nature, the forms and the sequence of relations between the ministry's individual sub-units and officials during the development and operation of the defence system. It is essentially a response to the legislative provision which requires the ministry to develop internal procedures and documents on planning.<sup>65</sup>

The SDR itself which was largely drafted by the Defence Ministry's experts and is devoted to defence matters is another example that shows that it is impossible to separate defence and law enforcement from each other in the contemporary security environment. As we have noted, the culture of developing strategic documents was also enhanced in the process of criminal justice system reform with the assistance of the EU. The Criminal Justice System Reform Action Plan which was adopted by a state commission led by the justice minister in 2006 refers to a package of legislative and institutional changes and relevant financial commitments to affect the Prosecutor's Office, the police, the criminal and administrative codes, the judiciary, legal education and free legal aid.<sup>66</sup>

The culture of strategic documents has also been fostered in the field of economy and finance as reflected in the transition to the aforementioned MTEF and the so-called BDD (Basic Data and Directions). The latter implies translation of the strategies of every sector and agency into the language of budget priorities.<sup>67</sup>

There is also the government's medium-term strategy (2007-2010) and the Anti-Corruption Strategy with its updated implementation action plans. The existence of the latter underscores the special place of corruption among the threats facing the country. A lot has been done since 2003 to eradicate endemic corruption. This will be discussed when the practical aspects of the security policy and sector reform are analyzed. As for the systemic eradication of corruption, the Anti-Corruption Strategy and an action plan were adopted in 2005 and the latter has been adapted on annual basis.<sup>68</sup> For example, the 2007 draft action plan of the Anti-Corruption Strategy highlighted the need for integration of the police code of ethics into the Police Academy's curriculum, greater efficiency of the Interior Ministry's public information and permit system, improvement of the witness protection system, establishment of the higher school of justice, development of criteria for the promotion of judges, establishment of the Prosecutor's Office Council as an independent body, a stronger obligation of public officials to report instances of corruption, a clearer separation of responsibilities among customs officials, development of uniform and transparent standards for employment and promotion in public service, drafting and adoption of the relevant legislative amendments and so on.<sup>69</sup>

All of this reinforces the statement by Roman Kakulia, representative of the Bureau for Coordination of European Assistance at the Office of the Minister of State for European and Euro-Atlantic Integration, that the culture of living according to strategic documents is presently being established in the

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<sup>65</sup> The law On Defence Planning adopted on 28 April 2006 requires the Defence Ministry to develop a provision on planning (Article 10). According to the ministry's staff, the PPBS was developed in response to this very requirement (interview with Nodar Kharshiladze, 16 February 2007). David Smith, a member of the International Security Advisory Board, has said that the introduction of the PPBS will render the armed forces more efficient while reinforcing democratic control over them. The 24 Saati newspaper, 26 June 2007.

<sup>66</sup> The materials of the final evaluative conference on the process of preparation of the Criminal Justice System Reform Strategy and Action Plan, Tbilisi, 12 June 2006.

<sup>67</sup> Speech by V. Lezhava, deputy minister of state for coordination of reforms, during the presentation of the Georgian Anti-Corruption Strategy Action Plan, 17 April 2007.

<sup>68</sup> The 2005 Anti-Corruption Strategy and Action Plan focused on the enhancement of the role of general inspection units in public agencies, transparency and greater efficiency of public services. *Freedom in the World-Georgia*, Freedom House (2007)

<sup>69</sup> The draft of the Georgian Anti-Corruption Strategy Implementation Action Plan, materials of a presentation organized by the Office of Minister of State for Coordination of Reforms, 17 April 2007.

country.<sup>70</sup> Naturally, it was not all done from scratch as there were agency statements, as well as a multi-agency strategy documents like the Poverty Reduction Programme, before 2003. Still, the security policy largely lacked planning before the November revolution. Also, most of the documents that were adopted in the past were mere declarations as official statements were detached from the reality and contained an unrealistically large number of priorities.

These kinds of problems were not completely eliminated after the revolution either. Officials too have admitted that certain strategic documents, for example the ENP AP, are more of less declarative, while adjustment of the strategies of different agencies is a matter of compromises.<sup>71</sup> The problems that the modern security policy and the security sector reform process encounter will be discussed in the next section. On the whole, from the viewpoint of the development of strategic discourse, the aforementioned and other documents including agency strategies (of the Prosecutor's Office and the Foreign Affairs Ministry, for example), reform actions plans (e.g. the police) and annual minister's visions (e.g. the Defence Ministry's and the Foreign Affairs Ministry's) provide a theoretical guide for the conduct of security policy and the management of security sector.<sup>72</sup>

Some of these documents cover individual areas of the security sector reform, while others refer to security policy. It is clear, however, that not all of the aforementioned strategic statements can or should be considered part of the security policy and sector. Still, given the complexity of the issues to be discussed, we could not avoid mentioning the ENP AP or the financial guidelines. At the same time, considering the content of the National Security Concept and a number of other official documents and statements, the nature of national threats prompts us to focus on the law enforcement and defence institutions and the civil agencies that exercise control or oversight over them. On the other hand, due to the unstable regional context and the existence of conflict zones inside the country, foreign policy activities and their mechanisms are an essential part of Georgia's security policy and sector. This is particularly true since the period of time between 2004 and 2007 was marked by efforts to generate foreign political support to confront external threats, the process of military development and the fight against organized crime.

As we have noted, along with the social, environmental and energy problems, the Georgian National Security Concept focuses, first and foremost, on the following set of traditional and non-traditional types of threats: Violation of territorial integrity and negative influence of external forces, presence of foreign military forces on Georgian territory, terrorism, organized crime and corruption. Behind the rather dry list there are noteworthy examples of how these threats materialized and were dealt with since the end of 2003.

The mere fact that Georgia's territorial integrity has been violated since 1992-1994 and this state of affairs is preserved through the Dagomys and Moscow agreements on the establishment of conflict zones and Russian-dominated peacekeeping operation formats in the former autonomous region of South Ossetia and Abkhazia respectively is telling. The situation in the former autonomous region of South Ossetia became tense in August 2004. There was two-way fire and there were casualties on both sides. In the summer of 2006, the Georgian government carried out an armed operation in the Kodori Gorge in Abkhazia. Previously, there was a legal vacuum in the area and the illegal armed group that had controlled the gorge had declared insubordination by then. Meanwhile, incidents involving use of weapons occurred in Gali District in the Georgian-Abkhaz conflict zone in 2004-2006.

There were also instances of violation of Georgian airspace by foreign aircraft and two incidents in which the country's administrative and military buildings came under fire in the Kodori Gorge and near

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<sup>70</sup> Roman Kakulia's speech at the "European Union and Georgian Civil Society – Strengthening Cooperation" conference, Tbilisi, 5 July 2005.

<sup>71</sup> Speech by V. Lezhava, deputy minister of state for coordination of reforms, during the presentation of the Georgian Anti-Corruption Strategy Action Plan, 17 April 2007.

<sup>72</sup> See: [www.pog.gov.ge](http://www.pog.gov.ge), [www.police.ge](http://www.police.ge)

the South Ossetia conflict zone. The Georgian side had every reason to assume that the aircraft belonged to the Russian air force and to seek an international inquiry.<sup>73</sup>

In September 2006, the Georgian authorities carried out two operations in Tbilisi. The objectives and the outcome of these operations indicated that there was a perceived threat of a coup linked to the activities of the Russian special services. Dozens of activists of the Justice party formed by Igor Giorgadze, former Georgian security minister who had fled to Russia, were arrested on 6 September. Four Russian officers suspected of espionage were also arrested and extradited to Russia later. In August 2007, after a lengthy investigation and trial, several members of Giorgadze's party were convicted and sentenced to imprisonment on charges of attempting a coup. According to the authorities, in May 2006, these individuals planned a revolt that was to take place in the autumn of the same year.<sup>74</sup>

We are not going to discuss the quality of these and other operations and trials that were conducted because of national security requirements. The events were so serious and the period of time that has passed since then is so short that the debates on these matters are still taking place. The investigation has both witnesses and evidence which includes missiles fired by the aircraft, weapons found in a building owned by Giorgadze's supporters and secret recordings. The defence lawyers, for their part, have spoken of bias and fabrication. However, given the objective of analyzing the country's security policy and sector, it is important that the topics of the Russian special services and military, the governments of the separatist regions and the Georgian organized crime, i.e. the main threats outlined in the country's National Security Concept, are intertwined with each other in these and many other episodes. Emzar Kvitsiani, leader of the group that staged a revolt in the Kodori Gorge in 2006, is an example of this link. It has been reported that Kvitsiani, who had a criminal record and held the position of the president's representative in the gorge in Shevardnadze's time, had ties with "crime kingpin" Taniel Oniani, a boss of a Soviet-style mafia.<sup>75</sup> He fled to Russia when the revolt was defeated.

The phenomenon of Badri Patarkatsishvili is the most recent example of the influence of local criminals and their Russian connections on Georgian politics. Following the crisis of October and November 2007,<sup>76</sup> the Georgian law enforcers caused a shock by publicizing secret recordings in which Patarkatsishvili and representatives of the headquarters that he had formed for the presidential election spoke of their own plans to stage a coup. According to the official version, Patarkatsishvili's representative contacted a high-ranking police official, Special Operative Department Chief Erekle Kodua on 17 December and offered to pay him 100m dollars in exchange for removing the interior minister. This was to be done against the background of staged instances of vote rigging during the 5 January presidential election and subsequent protest rallies. Kodua opted to collaborate with the investigation. The same scenario was later mentioned in the secret recordings of Kodua's conversations with Valeri Gelbakhiani, chief of Patarkatsishvili's campaign headquarters, and Badri Patarkatsishvili himself.<sup>77</sup>

The available information on Patarkatsishvili's past is controversial to say the least. This does not refer to the information that was publicized recently and prompted the Georgian Prosecutor-General's Office to institute criminal proceedings. It is about his Russian background, the ways in which he accumulated

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<sup>73</sup> The 24 Saati newspaper, 13 March 2007; the 24 Saati newspaper, 9 August 2007; Also, The Report of the Second Independent Inter-governmental Expert Group, 23 August, 2007

<sup>74</sup> The 24 Saati newspaper, 4 May 2007.

<sup>75</sup> The Akhali Versia newspaper, 26-27 July 2006.

<sup>76</sup> The reference here is to the events that unfolded following the statements made by the former defence minister against Saakashvili in October, specifically the large-scale protest rally on 2 November, the clashes between the protesters and the police on 7 November, the declaration of the state of emergency and the decision to call an early presidential election.

<sup>77</sup> *Information Note*, December 30, 2007 Director of the Analytical Department of the Georgian Ministry of Interior, Shota Utiaishvili. See also, Vladimir Socor, *Patarkatsishvili's Violent Strategy Exposed, But not Yet Defeated*, Eurasia daily Monitor, The Jamestown Foundation, January 4, 2008 – Georgian Election Special.

his fortune and his ties with organized crime in Russia.<sup>78</sup> His presence in Georgia and his activities in the spheres of media (until his sudden death in the beginning of 2008 he was the owner of Imedi, the most popular and largely pro-opposition TV station) and later politics could have been viewed as a problem for national security even before the aforementioned recordings were made.

However, one can only speculate about Patarkatsishvili's anti-state alliance with the Russian political establishment and special services. The anti-Georgian plans and activities of the Russian military and spies also remain a subject of speculation as the Russian side refutes any allegations of this sort while the Georgian side's ability to investigate is limited. Yet the political threat posed by some of Russia's official statements and actions is obvious even if it would take a more extensive investigation and evidence to prove that a crime had been committed.

In 2004-2007, Russian officials openly stated their discontent over Georgia's aspiration to join NATO, blamed Tbilisi for the escalation of tension in the conflict regions and opposed internationalization of the format of Russian peacekeeping operations in Abkhazia and South Ossetia. In 2006, amidst the heated Georgian-Russian disputes, Russia imposed a ban on the import of Georgian wine and mineral water and later deported thousands of ordinary Georgians. The latter act was a certain kind of response to the expulsion of four Russian military officers from Georgia over the alleged espionage. Added to this were the statements by the Russian president and diplomats that Kosovo's independence could set a precedent for Georgia's breakaway Abkhazia and South Ossetia. These statements were perceived in Tbilisi as Russia's attempt to find a formal reason for the violation of the country's territorial integrity.

Russian analysts and politicians often describe the Georgian government as authoritarian in order to explain their openly negative attitude to it. All the aforementioned actions by the Georgian law enforcers and special services have been described in Russia as unlawful and undemocratic and have been cited as instances of persecution of the people whose views are different from those of the government. However, regardless of whether the charges brought against Giorgadze's supporters and the Russian officers were well-founded and whether the Georgian government's policies in the conflict zones have been balanced, Russia's foreign and domestic policies certainly do not suggest that the government of this country is sincerely interested in democratic standards.

The US Department of State's official statement on strategic planning for 2007-2012 says that the United States and its European allies will stand firm to push back on negative Russian behaviour. This kind of behaviour implies centralization of power, weapon sales to undemocratic countries, support for separatist regions in Georgia and Moldova, economic pressure on Georgia and monopolistic use of energy to pressure neighboring states and gain control of infrastructure and strategic assets.<sup>79</sup> The Russian president's speech at the annual Munich Conference on Security Policy on 10 February 2007 rendered the US concerns more convincing. While voicing the traditional criticism against the US policy and the expansion of NATO, he also spoke about the bias of the OSCE bureaucracy and the international nongovernmental organizations. "Who can be worried that democracy and the rule of law is coming closer to somebody's borders?" NATO Secretary General Jaap de Hoop Scheffer asked in response to the Russian president's critical remarks on the expansion of the alliance.<sup>80</sup>

The West and Russia still cooperate in various formats but the level of confrontation is also rising. Russia has suspended its membership of the CFE Treaty which has been a cornerstone of regional security.<sup>81</sup> Again, Georgia was one of the reasons for this decision: The NATO member-states that are parties to the treaty believe that the closure of the Russian military base in Gudauta in Abkhazia is yet to be verified

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<sup>78</sup> Incidentally, until recently the Russian Prosecutor's Office was yet to drop the criminal case against him and he remained on the wanted list. A lot has been written about Patarkatsishvili's suspicious past. For the shortest and most recent piece, see Wladimir Socor, *Badri Patarkatsishvili: From Russian Shadowy Businessman to Georgian Presidential Claimant* Eurasia Daily Monitor, The Jamestown Foundation, , December 21, 2007, Vol 4, Issue 237

<sup>79</sup> *US Department of State, Strategic Planning 2007-2012*, [www.state.gov/documents/organization/82819](http://www.state.gov/documents/organization/82819)

<sup>80</sup> [www.securityconference.de](http://www.securityconference.de)

<sup>81</sup> CACI Analyst, July 25, 2007,



and hence they doubt whether Russia has been honouring its commitments under the treaty. Given this background, US analysts have described Putin's speech in Munich as a demand of "second Munich". Under the 1938 Munich treaty, the West abandoned Central and Eastern Europe. Putin demands that the same be done now. He knows that NATO does not pose a threat to him but he wants to gain complete control of the CIS and the Baltic region. Russia is a country that can offer nothing but despotism and corruption and wants to spread these very things abroad, Stephen Blank writes.<sup>82</sup>

The stance of the West has limited the Russian-Georgian confrontation to some extent but, at the same time, it has caused further anger in Russia's political circles. On 27 March 2007, the Russian Foreign Ministry issued a statement on Georgia's decision to file a case against Russia with the European Court of Human Rights in Strasbourg over the deportation of Georgians from Russia in the autumn of 2006. The statement said that Russia had refuted the accusations on a number of occasions and Georgia's move was nothing but a propaganda campaign aimed at gaining support for its anti-Russian policy. The following passage of the statement is particularly interesting: In the Russian Foreign Ministry's opinion, Georgia could have resolved the matters of concern through other methods, including contacts with the Russian government, though it opted to take an unusual step like a "state's appeal against another state" which was a negative precedent in bilateral relations.<sup>83</sup> This part of the text demonstrates the Russian establishment's negative attitude to the principle of civilized settlement of international disputes while also revealing a deep-rooted tradition of using what is a Soviet and essentially a criminal vocabulary. Offering informal methods of "settlement" as an alternative to appeals to formal institutions and voicing veiled threats against those who disobey is part of the language used by the Russian (and not only Russian) mafia.

Still, the Russian threat to Georgia is a political phenomenon. There are serious suspicions that Russia has often resorted to unacceptable – violent and sometimes criminal – methods while implementing its policy. Stronger evidence would, however, be required to argue that the Russian political leadership has been using the methods of organized crime. The Russian Prosecutor's Office, for example, reacted to Patarkatsishvili's criminal background earlier than the Georgian Prosecutor's Office. It may not be illogical to assume that an individual wanted by the Russian Prosecutor's Office has ties with the special services of the same country but there is little hard evidence to support this claim. It is all a subject of further investigation, which is not the purpose of this analysis. What matters most is that, as we have already noted, local and international criminal groups are interested in the change of Georgia's state policy to the same extent as Russia and corruption is their common "ally" inside the state bureaucracy.

Effective substitution of the state bureaucracy with mafia which took place against the background of total corruption and the growing influence of the Soviet mafia bosses – the so-called crime kingpins – in politics and business was the main cause of the 2003 revolution. It became clear before the revolution that, along with the members of Shevardnadze's and Abashidze's families and several officials who had close ties with them, crime kingpins Shakro Kalashov, Tariel Oniani and others were the wealthiest and the most influential people in Georgia. The media that were only partially controlled by Shevardnadze reported on Tariel Oniani's ties with officials, his role in securing the release of UN observers who had been taken hostage and so on. Badri Patarkatsishvili also established himself in Georgia during this period of time. It was a common practice for the police to advise the victims of theft to contact criminals and pay them in order to retrieve the stolen items. The impact of corruption in the state bodies and the strength of organized crime on the people, especially the young generation, was the most serious problem. Criminal mentality had gained a firm foothold in schools. The authors of the Main Directions of Georgian National Anti-Corruption Programme wrote that corruption had turned into a way of life in a number of spheres and it was difficult to distinguish between corruption and the society's traditions.<sup>84</sup>

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<sup>82</sup> Stephen Blank, *From Munich to Munich*, SSI, US Army War College, <http://www.strategicstudiesinstitute.army.mil/pdffiles/PUB774.pdf>

<sup>83</sup> МИД РФ Департамент Информации и Печати, Заявление МИДа РФ в связи с судебным иском Грузии Против России 441-27-03-07

<sup>84</sup> Main Directions of Georgian National Anti-Corruption Programme, 31 October 2000, p.9

The authors of this document created it on President Shevardnadze's request though most of it remained on paper. Ultimately, a force appeared that attempted to end the atrophy of state in Georgia through a revolution. The Georgian political system that was dominated by mafia was unable to resist the activists of several NGOs, the uncontrolled media and part of the political opposition which managed to mobilize tens of thousands of people during the protests triggered by the rigging of the 2 November 2003 parliamentary election. Eradication of corruption and organized crime became one of the revolutionary government's main challenges.

The development of the National Security Concept and reform strategies for the law enforcement bodies was coupled with the government's statements and specific actions in this area. More than 50 influential criminals were arrested in 2004-2007. Many criminals fled the country. According to the Interior Ministry, every single boss of the Georgian criminal network which was as active and well-organized as its Italian or US counterparts was either arrested or left the country by 2007. This struggle was reinforced through the new law On Combating Organized Crime and Racketeering.<sup>85</sup> "I would like to tell the criminals... We are not going to chase anyone for no reason... However, the police have made a decision that, if a criminal poses a threat to citizens or a police officer, they will not put the lives of citizens or police officers at risk and will eliminate every criminal on the spot if there is nothing else they can do", the Georgian president said.<sup>86</sup>

According to the interior minister, the authorities were effectively involved in a war against organized crime before 2007 and there were casualties on both sides. Ultimately, the criminals backed off. At the same time, minor crime and criminal mentality in schools remained a problem. As a reaction to the widespread crime among teenagers, the government decided to reduce the age of criminal responsibility to 12 years.<sup>87</sup>

While fighting the criminals involved in racketeering, the law enforcers devoted a great deal of attention to combating trade in drugs. In 2007, the Prosecutor's Office and the Interior Ministry worked on a strategy for combating drug addiction which focused on an attempt to marginalize drug users. In practice, while the struggle against drug dealers continued, bigger fines were introduced for the use of drugs.

Radical changes in staff which affected the security system to an especially significant extent were an example of the practical fight against crime and specifically against corruption. Thousands of employees of the police, the Security Ministry and the Defence Ministry were dismissed after the November 2003 revolution. A number of prominent law enforcers and other high-ranking officials were arrested.<sup>88</sup> The illegal property of both mafia bosses and former high-ranking officials was confiscated.<sup>89</sup> Some representatives of the revolutionary team and the post-revolution state bureaucracy were later charged with corruption too.

Therefore, the official strategic documents that have been adopted in recent years and the specific methods that have been used to deal with the threats outlined in them indicate that certain functions and parameters of the law enforcement sphere are an essential part of the Georgian security sector. The next section is devoted to the elements of the sector and the reforms taking place there. As for the borders of the sector, they can be determined through the aforementioned strategic discourse and the nature of the national threats facing the country.

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<sup>85</sup> The 24 Saati newspaper, 22 June 2007.

<sup>86</sup> The 24 Saati newspaper, 1 May 2006.

<sup>87</sup> Meeting of NGOs with the interior minister, 2 May 2007. Employees of the Prosecutor's Office believe that the crackdown on organized crime bosses contributed to the hike in juvenile violence at least to some extent since, previously, the mafia had partially controlled the youngsters in streets and schools. A confidential interview, 25 June 2007.

<sup>88</sup> For example, former chief of the Tbilisi crime police was arrested for abuse of power in 2007. The 24 Saati newspaper, 4 May 2007; in 2005, 120 high-ranking officials were arrested and charged with taking bribes ([www.police.ge](http://www.police.ge)). This would be unthinkable during Shevardnadze's presidency.

<sup>89</sup> The Akhali Versia newspaper, 20-21 September 2006.

## Map of Georgian Security Sector

Due to the nature and intensity of threats (conflict zones and Russian claims, organized crime and corruption), the process of security sector reform in Georgia has been conducted according to two imperatives that are not easy to combine: Strengthening of the country's power-wielding institutions, i.e. essentially the repressive apparatus, and democratic accountability. For the same reasons, it became even more difficult to separate Georgia's security and law enforcement sectors from one another.

Due to the nature of modern threats and the principles of systemic analysis of security, it might be impossible or undesirable to separate these sectors from each other. However, being the creation of modernity, democratic statehood requires strict definition of the roles of the military, the police and the civil authorities in terms of hierarchy, as well as professional autonomy and checks and balances.<sup>90</sup> Following the analysis of threats, the security discourse and the security policy, it is necessary to discuss the structural changes that have been implemented in the main functional units of the Georgian security sector – the defence and the law enforcement agencies and the agencies that exercise democratic civil control over them – since the November 2003 revolution. As we have said, the emphasis is placed on the law enforcement and control agencies and sub-agencies that have been directly involved in neutralizing the aforementioned four main threats.

### a) Defence ministry and armed forces

The revolutionary changes introduced many new elements in the defence sphere which is the traditional epicenter of the security sector. Consolidation of the military forces was the most significant objective highlighted in the final report of the International Security Advisory Board.<sup>91</sup> Consequently, the Interior Ministry's interior troops were incorporated into the Defence Ministry's armed forces, while the border protection forces that used to be an independent paramilitary unit became part of the Interior Ministry.<sup>92</sup> The Defence Ministry is now led by a civilian whose main responsibility is to exercise political leadership over the defence sphere. Following the amendments to the law On Defence adopted in December 2004 and May 2007, the responsibilities of the chief of Joint Staff (who is also the president's military advisor) as of purely military nature has been highlighted. According to the official data, 85 per cent of the Defence Ministry's employees were civilians in 2007.<sup>93</sup> The level of civil control has therefore increased considerably inside the agency.

In parallel with the restructuring of the Defence Ministry's civil office and the Joint Staff according to the NATO standards and the development of strategic documents and management and planning guides, the rules for manning the armed forces and their composition also changed. For example, the possibility of avoiding mandatory military service in exchange for paying a special levy was restricted, a reserve force was formed and an emphasis was placed on short-term training of those who did not join the regular army under the guidance of the National Guard. One of the reasons for this was the 2006 amendment to the National Security Concept which highlighted the need for the country to prepare for "unconditional and total defence". The National Guard was tasked with training tens of thousands of reservists. At the same time, professionalization of the regular forces

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<sup>90</sup> One of the differences between feudalism and modernity is that, in feudal times, the same individual often acted as a military, a police officer and a judge. See, A. Nordlinger, *Soldiers and Politics: Military Coups and Governments*, Prentice-Hall Contemporary Comparative Politics Series, Sep. 1976

<sup>91</sup> *ISAB Report 2006*, 15 February 2006

<sup>92</sup> According to the amendments to the law On Defence adopted on 25 May 2006, the border police only acquires the status of a military force during war.

<sup>93</sup> "Georgia: Advancing Towards NATO", a brochure published by the Defence Ministry, 2007.

continued and there is a plan to abolish the 18-month mandatory service in the armed forces altogether by 2009.<sup>94</sup>

There have been changes in the field of personnel training. Professional recruits and sergeants have been trained with the assistance of the United States and Germany, while the Defence Academy's four-year programme of officer training which was essentially Turkish was substituted with a one-year British programme. This time, the objective was to attract motivated individuals with higher education through a significant increase in salaries and other social benefits. The living conditions improved considerably. A new disciplinary code of the armed forces which had been developed in cooperation with NGOs (for example, the Justice and Freedom association) was adopted through a presidential decree on 10 February 2006. Along with discipline, the code focuses on the preservation of a serviceman's personal dignity.<sup>95</sup>

In general, contacts with NGOs and the academic circles have played a significant role in the transformation of the Defence Ministry. These kinds of contacts existed in the past too and the situation has not been perfect since the revolution in this respect either. This will be discussed later in the text. It is noteworthy, however, that a draft decree On Establishment of Georgian Defence Ministry's Public Council of Advisors was drawn up in 2004 in consultation with Giorgi Baramidze who was defence minister at that time. The council was to participate in the discussion of strategic documents and draft legislation, discuss the matters of protection of servicemen's rights and develop relevant recommendations. The process was halted when the minister was replaced though discussions and meetings continued to take place. A memorandum on collaboration was signed in 2007 by the first deputy minister and a representative of the NGO forum on defence.

As the social safety net provided to the servicemen improved and structural and systemic reforms were implemented, there was also an increase in defence procurement, the size of forces and consequently the defence budget too. In 2004-2005, the funds allocated in the budget were supplemented with the money from the so-called army development fund – a non-commercial body that had been formed in order administer the donations made by private business.<sup>96</sup>

The amount of money allocated to the Defence Ministry in the state budget increased from a few dozen million lari in 2003 to over a billion lari in 2007.<sup>97</sup> This kind of a hike stemmed from the fact that a modern defence system was effectively to be built from scratch.

The increase in funding produced some systemic problems: For example, the Defence Ministry's budget was amended on three occasions in 2007, which indicated that the state had practical problems in terms of planning in this sphere. The ministry's official website says that the priorities of spending are now being determined according to the newly-established defence planning elements. However, the Planning, Programming and Budgeting System (PPBS) that was developed with the assistance of the Netherlands and the United States would only have been used to the full extent when the 2008 budget was drafted.<sup>98</sup> At the same time, the problem here seems to lie with the difficulties encountered during the drafting of the entire state budget rather than the shortcomings in the Defence Ministry's planning. According to the defence minister, the ministry had requested some additional funds when the 2007 budget was

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<sup>94</sup> Amendment to the law On Levy for Postponement of Mandatory Military Service adopted on 21 June 2002, 30 June 2006; the law On Military Reserve Service, 27 December 2006; meeting with the defence minister, 2 May 2007.

<sup>95</sup> Report On the Protection of the Rights of Military Servants in Georgian Legislation and Practice 2006, prepared by the Civil Council on Defence and Security, 2007. <http://osgf.ge/ccds>

<sup>96</sup> Tereza Freese, *Defence Reform Poses Crucial Civil Society Test For Georgia*, Eurasia Insight 4/07/05, Eurasianet.org,

<sup>97</sup> Interview with Deputy Defence Minister Batu Kutelia, 6 December 2007. According to some sources, the budget was 1.5bn lari though the ministry's official website provides the figure of 1.271bn lari. See, <http://www.mod.gov.ge/2007/downloads/www.mod.gov.ge%202007%20budget%20with%202%20add.xls>

<sup>98</sup> <http://www.mod.gov.ge/?l=G&m=6>



originally drafted though it only received those funds when the budget was amended in the spring of 2007.<sup>99</sup> NATO representatives have also identified the amount of allocated funds as a problem. The ratio of the defence budget to the GDP has surpassed the average European standard. However, according to the Strategic Defence Review and the government's recent statements, the size of the defence budget will gradually decrease starting in 2008.<sup>100</sup>

In the process of long-term planning of the Georgian defence budget, funds were divided between three major budgetary categories, which is considered to be a NATO standard. For example, according to the Strategic Defence Review, 31 per cent of the money allocated to the armed forces in 2009 was to be spent on personnel, 42 per cent – on operations and maintenance and 27 per cent – on capital costs. The amount of money allocated for personnel was to decrease as the size of personnel would be reduced in 2010-2012. At the same time, growth of salaries and a further renewal of infrastructure and armaments was planned to take place in the longer term – in 2013-2015. The Defence Ministry's planning experts believed that the three-part division of costs would become more similar to the proportions applied in the West and would amount to 32 per cent for personnel costs, 37 per cent for operations and maintenance costs and 31 per cent for capital costs.

Transition of the armed forces to the NATO standards implies the reform in the areas of training and doctrines, logistics, planning and command and control systems which has been implemented during this period of time. At the same time the money has been spent not only on a mere renewal of the equipment and the creation of social safety system for the servicemen, but also on the construction of modern military bases and the increase of military personnel. While millions of lari were spent to build the Senaki and the Gori bases, professional infantry brigades were formed and reformed. Presently, the core of the armed forces, the ground forces, comprises four active brigades and another one that is currently being formed, as well as separate units. Only the fourth brigade that was established on the basis of the former interior troops has conscripts.

There were some 28,000 servicemen in the Defence Ministry's armed forces in 2007. According to the plan that had been adopted by the spring of 2007 and was outlined in the draft of the Strategic Defence Review, the Georgian armed forces were to comprise 26,000 servicemen in 2009 including some 17,000 in the ground forces, approximately 1,600 in the air force, about 800 in the navy and some 6,500 in the administration and the central structures. In parallel with this, work was underway to form four cadre brigades of the National Guard that are expected to train and re-train reservists for "unconditional and total defence". However, as was the case with budget, it is possible that there will be changes in the number of servicemen and in the doctrines in the near future. A decision was made in September 2007 to form a fifth infantry brigade. This was not envisaged by the original version of the Strategic Defence Review. Consequently, contrary to the forecasts reflected in the aforementioned document, it was decided to increase the number of servicemen to 32,000 by 2008. Judging by the original text of the Strategic Defence Review, it is possible that the concept of "total and unconditional defence" will be abandoned in the near future, which would change the current plans for the development of the National Guard.

As for improvement of the purely military skills of the Georgian armed forces, official sources have highlighted the progress made in terms of the training and equipment of the air defence units, as well as the special forces and the reconnaissance and mountain units. Foreign instructors have contributed

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<sup>99</sup> Meeting of NGOs with Defence Minister D. Kezerashvili, 2 May 2007.

<sup>100</sup> Considering the fact that the country is in a state of transition at present, it is possible that the figures will change again in the future. The Strategic Defence Review which was drafted in mid-2007 said that 736m lari would be allocated in 2008 though the 2008 state budget actually allocated 1.1bn lari for defence. It is also worth noting that, according to the guide on budgetary planning that was developed by the Georgian government as early as 2006 and was titled Main Data and Directions for 2007-2010, the defence budget was to be under 392m lari in 2007 which would amount to 2.7 per cent of the GDP (see, the Georgian government, Main Data and Directions for 2007-2010, p.40). In reality, the defence budget and the ratio have nearly quadrupled. The Finance Ministry did subsequently amend the document but the ministry's official website still carried the old data in early 2008. <http://www.mof.ge/documentfiles/bbd%20final.pdf>

significantly to this progress. For example, French instructors trained the personnel of the mountain training centre, while the Americans trained new recruits of the infantry brigades first under the Train and Equip Programme and later under the Sustainance and Stability Operations Programme.<sup>101</sup> Particular attention has also been devoted to the involvement of the personnel of infantry brigades in the US-led peace operation in Iraq.

Naturally, while the progress has been evident, it could not have been comprehensive. The non-classified part of the Strategic Defence Review notes that the components of the armed forces differ from each other considerably in terms of preparedness. It is important, however, that the Defence Ministry has been introducing objective indicators and standards for the assessment of preparedness since 2004. This should make it possible to exclude subjectivity in the planning of forces in the future. Along with the establishment of effective mechanisms of democratic control, analysis and planning of the preparedness of forces are essential requirements of the integration with NATO. The Strategic Defence Review was created in order to meet these very requirements.

The positive changes that were implemented in the defence sphere in 2004-2007 were not a linear process. For example, in 2004-2006, both NGOs and the human rights ombudsman voiced criticism over the instances of violation of soldiers' rights, unsubstantiated dismissal of officers and lack of transparency in the budget. However, the ministry's internal General Inspection began to operate more effectively in 2007. In September, the office of the human rights ombudsman issued a press release which said that disciplinary sanctions had been imposed on the officials who had created obstacles to the monitoring of military units by the ombudsman's representatives.<sup>102</sup>

It should also be noted that both international and domestic experts do not always keep the objective nature of problems in mind when conducting an independent analysis or voicing normative criticism of the reforms implemented in the defence system. These kinds of reports sometimes contain unverified information. For example, the low level of transparency of defence spending in 2004-2006 stemmed not only from a lack of respect for certain forms of accountability but also from bilateral problems in terms of public relations and communication, as well as the threat of Russia blocking Georgia's military purchases.<sup>103</sup>

The Consience and Peace Tax International NGO wrote in its 2007 report on the rights of servicemen that the term of alternative service was discriminatory in Georgia as it was twice as long as the term of military service. The organization also noted that the legislation did not make it clear whether the reserve of the military and of the alternative services was the same.<sup>104</sup> The report contains other, more substantiated critical remarks though the examples given above indicate that the authors did not examine the relevant legislation carefully. Since 2002, the 6th article of the law On Non-Military Alternative Labour Service says that the duration of alternative service only exceeds that of the mandatory military service by a third. The 17th article of the same law clearly says that, after completing the alternative service, an individual is included in the reserve of the alternative labour service. The law On Military Reserve Service adopted on 27 December 2006 specifies that those who have completed the alternative service are exempt from the military reserve.<sup>105</sup>

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<sup>101</sup> For information on the Sustainance and Stability Operations Programme see the 24 Saati newspaper, 5 July 2006; the 24 Saati newspaper, 20 September 2006.

<sup>102</sup> A confidential interview with the ministry's employees, 11 February 2007; the human rights ombudsman's press release, 4 September 2007.

<sup>103</sup> Meeting of NGOs with the Defence Ministry's representatives, 2 May 2007. It was noted at the meeting that the Western market of armaments was inaccessible to Georgia until recently, while the purchase of weapons in Eastern Europe and the former Soviet republics could always have been thwarted because of Russian pressure on the suppliers. This factor needs to be verified and does not render the demand for transparency illegitimate even if it is confirmed to be true. It is, however, a serious factor and is often overlooked in the analysis conducted by a number of critically-minded independent experts.

<sup>104</sup> [www.cpti.ge](http://www.cpti.ge)

<sup>105</sup> The law On Military Reserve Service, article 8.

## b) Interior Ministry

The Strategic Defence Review covers the question of coordination between the Defence Ministry and the Interior Ministry as advised by the International Security Advisory Board. The board that was formed as early as 1998 always called for interagency cooperation in order to avoid costly overlapping of functions.<sup>106</sup> Naturally, the board never called for a mixing up the specifically military or police functions as it would contradict the democratic model of civil-military relations. What it spoke about was the difficulty of maintaining both the police and the military navy and air force and the need for logistical coordination between them. The Strategic Defence Review highlights the slow but steady progress that has been made in this area. According to the document, the joint interagency commission of the Defence Ministry and the Interior Ministry was able to draw up the necessary recommendations by 2007. It has also been noted that the maritime defence and the coastal guard (border police – D.D.) forces must unite into multipurpose naval defence forces in the long run.

This type of a navy would probably have responsibilities more similar to those of a police force and would be tasked with safeguarding the so-called soft security<sup>107</sup> rather than performing purely military functions, if only because of the nature of threats facing Georgia. The Strategic Defence Review also says that the Interior Ministry is to play a leading role in neutralizing domestic threats.

Local organized crime, the problem of vulnerability of ordinary citizens and businessmen, transnational crime and the situation in the conflict zones, organized anti-constitutional activities and plans – this is an incomplete list of the threats that the Interior Ministry which is the second key agency of the Georgian security sector has been expected to neutralize since the revolution. The situation has been complicated by the fact that, prior to the revolution, these responsibilities were divided between two agencies – the Interior Ministry and the Security Ministry – and both (especially the Interior Ministry) were involved in crime and corruption networks to a considerable extent. The reform of these agencies therefore became the most significant challenge in terms of the reform and management of the Georgian security sector.

As we have noted, there were some major staff changes in both ministries after November 2003. The number of the Interior Ministry's employees was reduced from over 53,000 thousand before November 2003 to approximately 22,000 in early 2005.<sup>108</sup> At the same time, there was a substantial rise in salaries, which was an important method for combating corruption and improving motivation. Dismissals were not the only factor behind the reduction in staff numbers: The interior troops that were previously subordinated to the Interior Ministry were transferred to the Defence Ministry's system. The Border Guard Department, however, became part of the Interior Ministry. As for the dismissals, they affected the traffic police first and foremost as the agency was dissolved. The so-called patrol police was formed to replace it.

The patrol police is considered to be one of the most notable results of the reform implemented in the Interior Ministry. Along with regulating traffic, the patrol has been tasked with dealing with emergency situations and combating nearly all types of crime in streets and on highways. In 2005, the patrol was supplemented with the so-called neighbourhood police whose main responsibility is to resolve disputes between neighbours and prevent crime.<sup>109</sup> According to the Interior Minister, the patrol and the neighbourhood police have won unprecedented trust among the people. For this reason, crime police have frequently requested the patrol's involvement in their operations.<sup>110</sup>

<sup>106</sup> See, for example, *ISAB Report 2006*, 15 February 2006

<sup>107</sup> The term normally refers to search and rescue, environmental cooperation and the fight against trafficking and other forms of transnational crime.

<sup>108</sup> The 24 Saati newspaper, 25 March 2007.

<sup>109</sup> *Our Police*, the Interior Ministry, 2007.

<sup>110</sup> Meeting of NGOs with Interior Minister Vano Merabishvili, 2 May 2007.

Attention has also been devoted to the following matters in the Interior Ministry's system: formation of a unified system for the collection and processing of information and optimization of the ministry's departments, particularly as the mechanism of preliminary investigation was abolished and the investigative bodies assumed full responsibility over the investigation process.<sup>111</sup>

In parallel with the abolishment of the interior troops, a great deal of attention was devoted to the formation and strengthening of special units. Bases for special units were set up near the conflict zones, in Zugdidi and Karaleti. At the same time, the Department for Protection of Human Rights and Monitoring began to operate in the Interior Ministry in 2005. Together with the Interior Ministry's General Inspection, it is expected to uncover and prevent instances of abuse of power by police officers. According to the ministry's official information, the General Inspection uncovered over 1,000 instances of unlawful action by police officers in 2004-2006 and the officers were arrested and/or dismissed.<sup>112</sup> The number of instances of abuse, beating or torture of detainees in detention centres and police stations fell dramatically after the revolution. NGOs and the human rights ombudsman's representatives have confirmed this.<sup>113</sup>

The Interior Ministry's website carried the official version of the reform and mission document until recently. It emphasized that collaboration between the police and the nongovernmental and the private sectors was to play a key role in safeguarding the security of society.<sup>114</sup> For this reason, a decision was made at the initial stage of the reform to establish public councils at the central and the local levels. The document also noted that, based on the strategy for the reform of the Georgian criminal law, the police was to be transformed from a repressive body into an institution that protected citizens, while the police and the non-police structures of the ministry were to be separated from each other.

According to the website, the general outline of the reform was as follows: Separation of the strategic, the tactical and the operational levels of police management; exercise of strategic management and control over the police through the civilian minister and his office; establishment of the police, the border police and the security departments subordinated directly to the minister. The website also noted that, until a unified police department was formed, its responsibilities would be divided between the Crime Police Department, the Patrol Police Departments, the Special Operational Department and the main regional directorates of police. The minister would appoint the heads of these units in coordination with the president. According to the reform plan, local police chiefs would subordinate both to the patrol police responsible for safeguarding public security and the crime police responsible for solving crimes and would also be directly subordinated to the head of the police department. At the same time, police chiefs would follow the directives of the bodies of the Prosecutor's Office responsible for criminal prosecution and control over investigation. The plan said that the minister would report to parliament every six months, while the European standards of evaluation, accountability and training would be introduced. There was also an indication of intention to create a community police and to adopt a police code of ethics as the Council of Europe had recommended.

According to the plan of the Interior Ministry reform for 2006-2009 which was also available on the website until recently, the minister was to present a reorganization scheme in the first half of 2007 and drafting of the necessary normative acts was to begin. The unified national plan for crime prevention

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<sup>111</sup> See the Interior Ministry website, [www.police.ge](http://www.police.ge) The crime police is the primary body responsible for investigating crimes. The Special Operative Department and the Constitutional Security Department also have investigative functions. An interview with an employee of the Prosecutor's Office, May 2007.

<sup>112</sup> *Our Police*, the Interior Ministry, 2007.

<sup>113</sup> The 24 Saati newspaper, # 96, 4 May 2007, The reports of the Freedom House also highlight improvements in the police treatment of citizens and increase in its approval rating. See *Freedom in the World-Georgia*, Freedom House (2007)

<sup>114</sup> This and other information from the Interior Ministry's website ([www.police.ge](http://www.police.ge)) is given as of May 2007.



and the principles of a public-oriented police were to be drawn up and the formation of the public monitoring councils was to be completed by the end of 2007.<sup>115</sup>

It is worth noting that the aforementioned plans and principles were largely identical to the views expressed by Levan Izoria, former head of the Police Academy, in an article that was published in the *24 Saati* newspaper while he still held the office.<sup>116</sup> Izoria also suggested that the police had to replace the existing system of military ranks with special ranks and the police department chief had to be appointed by the president for a four-year term. In Izoria's opinion, the police department chief had to be given some autonomy in drawing up and spending the department's budget. However, as the situation changed later, the aforementioned conceptual document that was still available on the ministry's official website in May 2007 did not reflect the reforms implemented in practice and the plans for the future quite accurately.

Most of the plans described above were developed in 2004-2005. Some of them were implemented too. Reduction in staff numbers, formation of the patrol and the neighbourhood police and a greater role for the General Inspection are specific examples of how the plan for the reform of the Interior Ministry has been implemented. Presently, the interior minister, the deputy minister and the analytical department chief are civilians.<sup>117</sup> A memorandum on the monitoring of detention centres was signed with the office of the human rights ombudsman. However, the plans that remained posted on the ministry's website until recently were gradually revised as Ivane Merabishvili replaced Giorgi Baramidze as interior minister in December 2004. Halting of the process of police decentralization and the merger of the Security Ministry with the Interior Ministry were the most important developments in this respect.

The information on the Interior Ministry's structure available on the same website is different from the vision that was developed by the former head of the Police Academy. By the end of 2007, the Crime Police Department, the Administrative Department, the Human Resources and Organizational Department, the General Inspection Department, the Border Police Department, the Constitutional Security Department, the Counterintelligence Department, the Emergency Situations Management Department, the Information and Analysis Department, the Patrol Police Department, the Operative-Technical Department, the Special Operations Centre, the Protection Police Department and the State Material Reserves Department were subordinated directly to the minister. The Main Directorate for Protection of Strategic Pipeline is part of the Interior Ministry too. The Tbilisi and the regional main directorates and the Interior Ministry Academy are also subordinated to the minister. Although the structure outlined on the website does not show this, the deputy ministers are known to coordinate the following blocks: international contacts, services of purely police nature, protection of border, logistics and finance, intelligence and security. Meanwhile, the minister exercises direct control over a number of departments without any involvement of his deputies.

As for the reform of the Security Ministry and its ultimate incorporation into the Interior Ministry, most of the process took place in 2004. As was the case with the Interior Ministry, the emphasis was initially placed on the optimization of staff and structure and the abolishment of functions that either were excessive or had been a source of corruption (for example, the fight against economic crime). In late 2003, a reform concept was developed whereby the ministry was to give up the police and power-wielding functions and was to become an intelligence and informational-analytical agency.<sup>118</sup> The possibility of replacing the Soviet system of military ranks with the US system of ranks was being discussed in order to reform the staffing policy and the management of human resources.

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<sup>115</sup> [www.police.ge](http://www.police.ge) (May 2007)

<sup>116</sup> The *24 Saati* newspaper, 25 March 2005

<sup>117</sup> An interview with Deputy Interior Minister Ekaterine Zghuladze, 4 September 2007.

<sup>118</sup> The *24 Saati* newspaper, 21 September 2004.

However, the process of transforming the ministry into a purely civilian institution was not a short one. A unified system of ranks and positions was never introduced and, after about a year of reform, a decision was made to merge the ministry with the Interior Ministry.

Presently, the Security Ministry's former functions are performed by the Interior Ministry's Information and Analysis Department on the one hand and its Antiterrorist Centre and Counterintelligence Department on the other. The responsibilities that are similar to the ministry's former police functions are divided between the Special Operative Department and the Constitutional Security Department.<sup>119</sup>

When discussing the essence of the Interior Ministry's functions and reform, it is necessary to say that the fight against what the government considered to be the most immediate threats and the risk of destabilization of the police and security system caused some changes in the original plans. In the interior minister's opinion, the authorities were essentially involved in a war against criminals in 2004-2006. Detaining criminals was a dangerous business and special operations led to casualties. At the same time, in order to overcome the sense of impunity, the police tightened its policy on drug users and stepped up the control of movement in the conflict zones. Along with the other law enforcement bodies, the ministry backed the proposal to reduce the age of criminal responsibility from 14 to 12 years.<sup>120</sup>

The minister has not denied that it is necessary to make a clearer distinction between the police and the non-police functions, the municipal and the crime police. According to the European Neighborhood Policy Action Plan, a lot remains to be done in terms of democratization of the system. It should also be noted that, much like the Defence Ministry's non-budgetary funding, a non-budgetary fund that was to provide assistance to the law enforcement bodies was established after the revolution. This would not be considered best practice in stable democracies. The fact is, however, that the rapid decentralization and the immediate mitigation of the repressive methods of combating crime with actions aimed at crime prevention that had been advocated by the former head of the Police Academy were considered to be premature moves until recently. The post-revolution leadership of the system is proud of having weakened the influence of organized crime bosses, of the scale of the fight against corruption in the police and of the decrease in the incidence of crime such as abduction and car theft.<sup>121</sup> All of this was supported by extensive evidence that indicated considerable improvement of a number of human security parameters in the country. Against this background, Izoria's views were deemed to be a thing of the future at best and an idealistic approach at worst, while the leadership's original decision to accept them was believed to have been a mistake.<sup>122</sup>

Naturally, the centralization and the repressive policy implemented against criminals had their negative consequences in terms of human rights and the rule of law. These will be discussed in the next section. It has to be noted here that, despite the essential separation of the military and the police functions which was highlighted by foreign advisors too, there is still a contingent of conscripts in the Interior Ministry System albeit a limited one.<sup>123</sup> The contingent guards the ministry's buildings. There is a similar situation in the Justice Ministry's penitentiary system. Representatives of the Defence Ministry have said that the decision to abolish conscription altogether by 2009 will have to be made jointly with these agencies.<sup>124</sup>

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<sup>119</sup> An interview with the Interior Ministry's representatives, September 2007.

<sup>120</sup> Interior Minister Vano Merabishvili's meeting with NGOs, 2 May 2007.

<sup>121</sup> [www.police.ge](http://www.police.ge)

<sup>122</sup> A confidential interview with the Interior Ministry's employees, September 2007.

<sup>123</sup> According to 28 April 2006 amendments to the Law on Police, conscript can be enrolled in the police to serve his military duty. Selection criteria and the regulations of service are approved by the minister.

<sup>124</sup> A meeting in the Defence Ministry, 2 May 2007.

### c) Other executive agencies of security sector

In the final period of Shevardnadze's presidency, the state was essentially engaged in self-destruction. The issues of weakness of the state and corruption were therefore included in the National Security Concept adopted in 2005, which would have been a strange decision in a developed democracy. Consequently, eradication of a nihilistic attitude to the law among officials, businessmen and ordinary citizens was the government's primary objective and an inseparable part of the security policy in 2004-2007. It is for this reason that the entire Interior Ministry is considered to be part of the security sector. The need to overcome the syndrome of a weak state is also the reason why not only the penitentiary system and the Special Service of Foreign Intelligence, but also a number of subdivisions of the Prosecutor's Office and the Finance Ministry, have to be discussed in close link with the sector.

After the revolution, major changes were implemented in the penitentiary system which is subordinated to the Justice Ministry. Given the focus on the problems of the national security sector, we should highlight the reduction in the influence of professional criminals inside the system and the corruption that it had produced, a real increase in the law enforcers' influence over penitentiary facilities, changes in the staff and strengthening of the special units.<sup>125</sup> The reason why this area became a pressing issue in the context of the security sector reform is that the criminals operating in the country often received instructions from prisons. At the same time, the government's efforts to fight crime increased the number of prisoners several times and produced an unprecedented overcrowding in prisons. Consequently, the living conditions in prisons deteriorated and the risk of prison riots increased. At the same time, the reform of the system was accompanied by controversy and serious criticism on the part of human rights organizations. This will be discussed in the next section. It has to be noted that, during the process of reforms, the penitentiary system was unable to avoid prison riots, special operations and questions over these and other matters that often remained unanswered.

As for the Special Service of Foreign Intelligence that was formed during Saakashvili's presidency, given the nature of its functions, the standard requirements of transparency that the executive branch is expected to meet only apply to it to a limited extent.<sup>126</sup> At the same time, the service is subordinated directly to the president, coordinates its activities with the similar sub-agencies of the Interior Ministry and performs an analytical as well as an operative function. It is worth noting that a representative of the nongovernmental sector rather than a spy with an extensive Soviet and post-Soviet background was appointed as head of the service. In the recent period of time, the leadership of the agency has been collaborating with the intelligence agencies of democratic countries and training new employees.

In general, the details of operation of the intelligence system are regulated by the law On Intelligence Activities which was updated in December 2004 and the law On Counterintelligence Activities adopted in November 2005. It was on the basis of the updated version of the former law that the service was established. The law says that the special foreign intelligence service is part of the

<sup>125</sup> According to the official information, 20 employees of the system have been arrested since the 2003 revolution for mistreatment of prisoners. At the same time, the so-called crime kingpins, those who controlled criminal networks, were isolated from the rest of the prisoners. A training centre was set up for the employees of the system. Salaries were raised. A penitentiary system code was developed. New mechanisms for the monitoring of prisons were introduced. *Reform Progress report*, Ministry of Justice of Georgia, Department of Prisons

<sup>126</sup> The legislation provides for judicial control and supervision by the Prosecutor's Office in cases concerning restriction of the constitutional rights of individuals and legal entities by services involved in intelligence and operative activities. The special group of the Chamber of Control whose members have access to the information considered to be a state secret are also authorized to conduct financial inspection in the special services (see the law On Counterintelligence Activity, chapter 5). However, the Special Service of Foreign Intelligence is not involved in operative activities that could violate the constitutional rights of Georgian citizens inside the country. Aside from the president, the parliamentary group of trust is essentially the only effective mechanism for controlling it.

country's intelligence system along with the intelligence units of the Interior Ministry and the Defence Ministry.

According to the law On Weapons, the Defence Ministry, the Interior Ministry, the Justice Ministry, the foreign intelligence service, the Finance Ministry's special sub-agencies and the Special Service of State Guard can have so called military-combat weapons. This is essentially the core of the Georgian security sector's executive agencies. The main function of the Prosecutor-General's Office is to oversee investigation and bring prosecution. However, since the Prosecutor's Office was separated from the judiciary through the 2004 constitutional amendments and the fight against organized crime has intensified, it is possible to consider this independent agency to be part of the security sector's executive core to some extent. According to the law On Operative and Investigative Activity, the operative bodies of the Ministry of Environment Protection and Natural Resources are authorized to engage in operative and investigative work along with the aforementioned agencies. However, a body that is involved in these kinds of activities does not automatically become part of the security sector. As it has been noted on multiple occasions, the borders of the sector must be determined according to the nature and the scale of the threats that it is expected to neutralize. Although environmental problems fit into the modern concept of security policy,<sup>127</sup> the operative bodies of the Georgian Ministry of Environment Protection and Natural Resources are not involved in detection and prevention of environmental threats of national or regional significance. Their primary objective is to exercise state control in the sphere of environment and use of natural resources, to prevent illegal cutting of timber and to prompt the people to respect the environmental legislation.<sup>128</sup>

The Special Service of State Guard is another paramilitary agency subordinated directly to the president. The organization operates according to the relevant law that was adopted in 1996 and has been adapted several times since then. The first article of the law says that the service safeguards the security of the state in certain areas. These areas include provision of the personal security of the country's top leaders, protection of some diplomatic missions and administrative buildings. According to the law, the service is professional and contractual though article 10 (2) provides for recruitment of conscripts and the duration of their service is determined by the Georgian law On Military Duty and Military Service. The president is to approve the rules for the service of conscripts.

Before the 2003 revolution, the Special Service of State Guard was responsible for the protection of a number of strategic facilities (for example, a pipeline) and was deemed prestigious because of the better terms of service and higher salaries. At the same time, the guard was considered part of the military forces along with the interior troops, the border troops and the Security Ministry's paramilitary subunits.<sup>129</sup> As things stand in 2007, only certain units of the Special Service of State Guard, namely those responsible for the protection of top officials, can be described as elite units. It is also interesting that, although the law On Military Duty and Military Service applies to this and a number of other agencies, the 14 September 2007 law on the number of servicemen in the armed forces only implies the Defence Ministry's armed forces and refers to 32,000 servicemen. This kind of a change in the status of paramilitary structures is likely to stem from the recommendation of the International Security Advisory Board to make a clearer distinction between military, paramilitary and police agencies and functions.

We will get back to the incomplete separation of these kinds of functions in the Georgian security sector in the next chapter. In order to finish the description of the Georgian security sector's executive agencies, it is necessary to mention a number of sub-agencies of the Prosecutor's Office and the Finance Ministry.

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<sup>127</sup> Barry Buzan, Ole Wæver, Jaap De Wilde, *Security, A New Framework for Analysis*, Lynne Rienner Publishers, Inc. 1998

<sup>128</sup> <http://www.moe.gov.ge/page.php?id=707>

<sup>129</sup> Davit Darchiashvili, *Politicians, Soldiers, Citizens: Analysis of Georgia's National Security and Civil-Military Relations*, Tbilisi State University, 2000.

As early as during Shevardnadze's presidency, when the Prosecutor's Office was still part of the judiciary, the relevant constitutional provision was largely a formality. As we have noted, the Prosecutor's Office became an independent body following Saakashvili's election as president and its chief, the prosecutor-general, is now appointed by parliament on the basis of the president's nomination.<sup>130</sup>

When Zurab Adeishvili, who had served first as justice minister and then as security minister in the months after the revolution, was appointed prosecutor-general, the Prosecutor's Office acquired unprecedented influence in the Georgian government. Adeishvili's agency was among the bodies that initiated the reform of the criminal justice system which inevitably affected the security sector and policy. The Prosecutor's Office played a leading part in combating organized crime and investigating the events in the Kodori Gorge and the plans of Igor Giorgadze's supporters. Due to the complexity of these cases and their importance for the state, the Prosecutor's Office exercised not only control over the police investigative bodies but was also directly involved in the process of investigation. This was done through the formation of inter-agency groups during the investigation of the cases of so-called crime bosses.<sup>131</sup>

In 2004-2007, the Prosecutor-General's Office was preoccupied with internal structure reforms and development of the legislative framework for combating crime. The number of employees of the Prosecutor's Office was reduced by about a third in 2004. The number of territorial units of the Prosecutor's Office was reduced too. The military, the penitentiary and the transport prosecutor's offices which had previously operated as independent bodies were abolished.<sup>132</sup> A system of competitive employment was introduced and a human rights department responsible for uncovering instances of violation of human rights in places of detention was formed. According to the data provided by the Prosecutor-General's Office, over 300 employees of law enforcement bodies were charged with torture, threat of torture, degrading and inhumane treatment, abuse of office and abuse of power in 2006. More than 200 of them were found guilty by court.<sup>133</sup>

Along with the Parliamentary Committee on Legal Issues, the Prosecutor-General's Office played a leading role in developing legislation for the fight against organized crime and racketeering, confiscation of illegal property and plea bargaining, as well as the new Code of Criminal Procedure which was adopted in the first reading in 2007. The opinion of NGOs on the latter has generally been positive though it has been suggested that it is necessary to introduce stronger safeguards for the protection of victims' rights and the code is yet to gain final approval.

The inter-agency group that developed the new code and the amendments to the old one comprised representatives of NGOs among others and worked under the organizational umbrella of the Prosecutor-General's Office. The group was able to ensure that the law now makes a clearer distinction between operative activities (the police) and prosecution (the Prosecutor's Office). The structural problem that stemmed from the power of detaining an individual without bringing charges against him or her was also resolved in 2004.<sup>134</sup>

The Finance Ministry's Revenues Service which was established through a law adopted on 29 December 2006 is another institution whose activities affect the executive part of the security sector. It is responsible for administering the tax and customs systems. However, it is also involved in operative and investigatory activities since some structural units of the service act as law en-

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<sup>130</sup> The relevant article, article 91, was abolished through the 6 February 2004 constitutional amendments.

<sup>131</sup> Interview with a former employee of the Prosecutor's Office, November 2007

<sup>132</sup> The 24 Saati newspaper, 26 August 2004

<sup>133</sup> The 24 Saati newspaper, 4 May 2007

<sup>134</sup> Interview with criminal law expert G. Jokhadze, 25 June 2007



forcement bodies and are guided by the Code of Criminal Procedure. The service is authorized to organize inspection procedures on highways or in territorial waters in emergency situations and take compulsory measures as stipulated in the law. The special, operative-investigatory and compulsory powers of the Revenues Service are extended to the employees authorized to conduct preliminary investigation, the special detachment and the authorized staff of customs posts and checkpoints. The rules for the use of firearms by these employees are stipulated in the law On Police. The fact that the law On Public Service only applies to the employees of the Revenues Service in cases where their activities are not regulated by the law On Revenues Service of Finance Ministry is another indication of the service's special nature.<sup>135</sup> For example, the employees of the service who have the aforementioned special powers are forbidden to form political parties or become involved in their activities.

Formation of the Revenues Service effectively began in 2007. The Finance Ministry's responsibilities that involved combating threats on a national scale and required collaboration with other agencies of the security sector had previously been carried out by the independent Customs Service and the Financial Police which was created after the 2003 revolution.

As the unified Revenues Service, so the two agencies used to fight economic crime which is an interesting sphere for organized and transnational crime that poses a threat on national scale. The Customs Service has had regular contacts with the Border Police. The Financial Police became a leading institution fighting the rampant legal nihilism, corruption and the widespread practice of tax evasion in business circles and tax agencies after the revolution and engaged in the struggle against criminal networks in 2004. It is worth noting that Davit Kezerashvili, first chief of the Financial Police, has been in charge of the Defence Ministry since late 2006.

As was the case with other security and law enforcement institutions, a number of operations carried out by the Financial Police sparked off controversy and drew critical reaction from the government's political opponents, human rights organizations and the general public, which will be discussed in the next chapter. As for the reform of the security sector, it has to be noted that a lot was done in the given period of time to bring new employees to the Customs Service, improve the customs procedures and upgrade the agency's equipment.<sup>136</sup>

#### **d) Mechanisms for civil control**

Civilians have been in charge of the Defence Ministry and the Interior Ministry since 2003, which is an essential mechanism for civil control over the security sector. However, democratic civil control requires more than that. Also, it has to be noted that, when civilians began joining defence and security services in the early 1990's, a new type of a problem arose as politicians engaged in operative activities normally carried out by the military or the police.<sup>137</sup> The classic dilemma of civil-military relations where unrestrained expansion of the civil control sphere leads to micromanagement of the military by political officials also presented itself to some extent in 2004-2007. The involvement of interior ministers (first under Baramidze and later under Merabishvili) in planning and carrying out anti-crime operations and the defence minister's interference with the activities of the General Staff (later the Joint Staff) can be cited as examples of this. It is therefore essential to have efficient mechanisms for governmental, parliamentary and judicial control over the security sector in order to

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<sup>135</sup> The law On Revenues Service of Ministry of Finance of Georgia, 29 December 2006

<sup>136</sup> The Akhali Versia newspaper, 11-12 April 2007

<sup>137</sup> For example, Tengiz Kitovani was head of the Government Commission on Defence, member of parliament and commander of the National Guard in the months of Gamsakhurdia's rule. During the same period of time, Vazha Adamia served as chairman of the Parliamentary Commission on Defence, National Security and Law Enforcement while also being the leader of a paramilitary group. See Davit Darchiashvili, *Politicians, Soldiers, Citizens: Analysis of Georgia's National Security and Civil Military Relations*, Tbilisi State University, 2000, pp 264-285.

ensure that the control is democratic and to address the confusion of roles resulting from micromanagement.

The Georgian state is a mixed political system and has a strong presidential office. The president has a special role in managing and controlling the security sector. He is the commander-in-chief. His role was reinforced through the 2004 constitutional amendments and he can now dissolve either the government or parliament in the event of serious discord between them.<sup>138</sup> Prior to the adoption of the constitutional amendments, the president could not use military forces during a state of emergency without parliament's consent. He obtained this power on 6 February 2004 though he is required to seek parliamentary approval within 48 hours of making such decision, i.e. post factum.<sup>139</sup> The president's power to use military forces without parliament's consent is currently only limited in relation to fulfilment of international commitments.

Although the government is accountable to both parliament and the president and the prime minister nominates members of the cabinet with parliament's approval, the president has exclusive prerogative with regards to the interior and the defence ministers. The amended Article 73 of the Constitution emphasizes the president's right to dismiss them on his own initiative. The president presides over the National Security Council and appoints and dismisses the chief of the Joint Staff. It is also important that, according to Article 78 of the Constitution, the president can chair a government meeting devoted to issues of special importance to the state and the meeting's decisions are endorsed through a presidential decree.

The law On the National Security Council which is the president's consultative body was amended in 2004 too. The secretary of the council also became the president's assistant on security matters. From a formal point of view, the change rendered the agency more similar to its US counterpart which it was originally designed to emulate.

The cabinet, i.e. the government of Georgia, is also involved in managing the security sector. To begin with, the prime minister is a member of the National Security Council, while the so-called armed power-wielding ministers are members of the cabinet. The draft budgets of the Defence Ministry and the Interior Ministry are finalized in coordination with the finance minister and are approved at a cabinet meeting. According to the law On Defence, the government is responsible for supplying the military forces with funds, combat equipment and material and technical resources, providing for the social security of the servicemen and implementing measures necessary for the protection of the border.<sup>140</sup> The Economic Development Ministry's State Procurement Agency is also responsible for the lawfulness of the defence and security procurement.

In democratic countries, parliament is the leading body responsible for exercising democratic control over the security sector. Georgia is no exception in this respect. According to the Constitution, the Georgian parliament is the country's supreme representative body which exercises legislative authority, determines the main direction of the country's domestic and foreign policy and controls the government's activities within the framework established by the Constitution.<sup>141</sup> The law On Defence says that, along with conducting the relevant legislative work, parliament adopts the Military Doctrine and the blueprint for the development of the armed forces, determines the number of servicemen

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<sup>138</sup> The only case where the president cannot dissolve parliament is when 3/5 of MPs pass a vote of no-confidence in the government. The president can only dismiss the government in this situation. Constitution of Georgia, Article 81.

<sup>139</sup> Constitution of Georgia, Article 100. One could cite the events that unfolded in the autumn of 1998 as an example that justifies this amendment. Back then, the situation required immediate action against an armed group of rebels though the old Constitution only provided a limited possibility for this. It might have been the reason why the president took a risky step and ordered the use of force against the rebels without declaring a state of emergency.

<sup>140</sup> The law On Defence, Article 5(1). The article was adopted on 30 June 2006.

<sup>141</sup> The Constitution of Georgia, Article 48

in the armed forces, ratifies and revokes international military treaties and agreements, discusses and approves the defence budget and exercises control over the processes taking place in this sphere and fulfilment of laws.<sup>142</sup>

The mechanisms for parliamentary control over the defence and security sphere are additionally set out in parliament's Rules of Procedure and the law On Group of Trust.<sup>143</sup> The former covers an MP's status and the powers of committees, factions and ad-hoc parliamentary commissions. The parliamentary committees, for example, can summon ministers and ask for explanations at any time. The Group of Trust which operates according to the law adopted in 1998 and amended in 2004 is formed by the Parliamentary Committee on Defence and Security and exercises budgetary control over the government's special programmes and secret activities. According to the law, the five-strong Group of Trust is to be made up of the committee chairperson, two MPs from the parliamentary majority, an MP elected in a single-mandate constituency and a member of an opposition faction.<sup>144</sup> The Group of Trust is the only body that exercises parliamentary control over the Foreign Intelligence Special Service. The procedures and the time frame for presenting the yearly draft budget and amendments to it to parliament were clarified after the revolution. The Chamber of Control aids parliament in controlling implementation of the budget as it verifies whether the non-classified expenditures are consistent with the approved articles of the budget.<sup>145</sup>

In 2004-2007, the Georgian parliament adopted numerous laws and legislative amendments that were directly linked to the security sector reform. Some of these have already been discussed. Legislative amendments were adopted to introduce defence planning, to form the Joint Staff and to disband the Interior Troops. Some of these legislative changes were initiated by the Committee on Defence and Security.

At the same time, there were problems in terms of the committee's practical work. Some representatives of NGOs believed that the Committee on Defence and Security of the parliament elected in 2004 was starting to resemble the Defence Ministry's structural unit as it supported every proposal of the security sector's executive branch and did little to control the ministry. According to the critics, members of the committee lacked both competence and political will to oppose some of the Defence Ministry's authoritarian moves that violated the rights of soldiers or conscripts.<sup>146</sup> Members of the committee's staff are not denying that the revolutionary changes in the government and the lack of experience on the part of newly-elected MPs affected the committee's work. However, they have also said that the pre-revolution parliament did not have particularly extensive experience of dealing with security matters either. And it was quite difficult to obtain information from the ministries before 2003.<sup>147</sup>

It has been noted that a number of new laws that determine the sector's functions generally meet the standards of democratic countries, which has been confirmed by foreign experts too. Both the ministries and parliament must therefore be credited for the progress. As for the personal ties between the ruling party's MPs and officials from the executive branch, according to the members of the committee, these ties have helped minimize bureaucratic obstacles to the exchange of information. The party affiliation did bring the officials who were to be controlled excessively close to the ones

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<sup>142</sup> The law On Defence, Article 4

<sup>143</sup> Interestingly, the law On Defence also mentions the law On Parliamentary Committees in this context. The latter, however, was revoked on 25 November 2005 and the legislators apparently forgot to amend the law On Defence accordingly.

<sup>144</sup> The law On Confidence Group, Article 1-3

<sup>145</sup> Interview with a representative of the Parliamentary Committee on Finance and Budget, August 2007

<sup>146</sup> *Army and Democracy: Prospects for Democratization of Georgian Army*, the Justice and Freedom association, 2006, pp 99-100

<sup>147</sup> Interview with the members of staff of the Parliamentary Committee on Defence and Security, August 2007; for further information on the committee's problems before the revolution, see Davit Darchiashvili, *Politicians, Soldiers, Citizens: Analysis of Georgia's National Security and Civil Military Relations*, Tbilisi State University, 2000



who were supposed to control them but thematic disputes were not uncommon in relations between the ministries and the MPs. For example, it was the committee that demanded that the draft law on military police which had been drawn up by the Defence Ministry was recalled and revised in a fundamental manner.

Some of the shortcomings of parliamentary control will be discussed later. The following problems must, however, be highlighted in the context of this section: Until recently, MPs had limited opportunities of studying the experience of the leading countries in the field of democratic civil control extensively. The fact that the ministries presented proposals too frequently created problems in terms of organizing committee meetings while the mechanism for dissemination of detailed draft budgets of the ministries among MPs required improvement.<sup>148</sup>

The role of the judiciary is extremely important if the security sector is to operate according to democratic standards. For example, the law On Counterintelligence Activity which was adopted on 11 November 2005 stipulates that a court's permission is required to conduct electronic surveillance of an individual's activities and monitor his or her correspondence. In general, the activities of the special services that involve restriction of the constitutional rights of citizens are subject to judicial control.

The trials that took place in 2004-2007 often drew criticism from human rights watchdogs and political organizations. As mentioned earlier, the judiciary was usually accused of being subordinated to the executive branch. The validity of criticism and the arguments that it was founded on will be discussed again in the next section. It has to be noted that, from the systemic point of view, some of the steps that were taken during this period of time reinforced the autonomy of the judiciary while others undermined it. The latter category includes the decision to retain the status of the Supreme Council of Justice as the president's consultative body and the old rule for its formation in the first years after the revolution. As a result of this decision, judges were a minority in the council although it was the council's prerogative to select candidates for the positions of judges and to implement disciplinary measures against incumbent judges. However, the council became an independent body through the 27 December 2006 constitutional amendments. Judges are now a majority in the council and the Supreme Court chairman presides over the body.

The judicial reform is believed to have begun in 1997 when the law On Common Courts was adopted. The law introduced division of responsibilities between regional courts, district courts and the Supreme Court. After the revolution, however, the reform was officially declared to have been imperfect, if only because it did not extend to the entire system of justice.<sup>149</sup>

Mergers of common courts and specialization of judges were among the measures implemented after the revolution. The Supreme Court is no longer involved in substantive consideration of cases and is solely responsible for evaluating the legality of decisions passed by courts of appeal.<sup>150</sup> A decision to introduce juries has been adopted in principle and is reflected in the Constitution. Following the aforementioned 2006 constitutional amendments which led to changes in the status and composition of the Supreme Council of Justice, judges of the courts of first instance are appointed by the Supreme Court chairman rather than the president. As for the president's levers for influencing the judiciary, he appoints two of the 15 members of the Supreme Council of Justice, presents candidates for the position of a Supreme Court judge to parliament and appoints three out of the nine members of the Constitutional Court.

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<sup>148</sup> According to the members of the committee staff, every member of the committee had access to the electronic version of non-classified details of the Defence Ministry's draft budget. Other MPs, however, would have had to settle for the aggregate figures presented in few articles of the draft state budget unless they made extra efforts to obtain further information. Interview with members of the staff, August 2007

<sup>149</sup> Interview with Supreme Court Deputy Chairman Zaza Meishvili, August 2007

<sup>150</sup> Interview with Supreme Court Chairman Konstantine Kublashvili, the 24 Saati newspaper, 6 August 2007

During this period of time, particular attention was devoted to establishing through legislation the rules for communication with judges, reinforcing the role of the School of Justice in the training of future judges and developing guidelines for endorsement of the practice of uniform judicial decisions. A controversial ban on the use of TV and photo cameras in court rooms was introduced in 2007. There are also plans to introduce the so-called electronic records of court sessions in order to exclude bias in the process of editing and provide additional mechanism for evaluating objectiveness of judicial proceedings.<sup>151</sup>

The judiciary is to play a particularly important role in ensuring the so-called human security which implies protection from criminals, as well as from the violence perpetrated by the state. In case of the latter, the judicial statistics which show a significant increase in the number of alternative sentences in 2006 are a sign of a positive trend. The number of plea bargains has also increased, while administrative disputes were resolved in favour of individuals and legal entities more often than before.<sup>152</sup> Practice, however, is richer and more diverse than the statistics. Consequently, even NATO officials have highlighted the need to further reform and strengthen the Georgian judiciary.<sup>153</sup>

The office of the human rights ombudsman is another independent state institution that is directly involved in controlling the security sector. It was established through a law adopted in 1996 and is responsible for overseeing protection of human rights and freedoms. The human rights ombudsman is appointed by parliament. A candidate for this office can be nominated by the president, a parliamentary faction or a group of at least 10 MPs. The press releases, specific addresses and recommendations and periodical reports presented to parliament by the office of the human rights ombudsman in 2004-2007 mostly levelled criticism against the law enforcement and penitentiary agencies. The human rights ombudsman's office has also been concerned with the protection of the rights of servicemen. The Georgian human rights ombudsman obeys only the Constitution and the relevant law. Interference with his activities is punishable under the law.<sup>154</sup>

Media and the civil society play a special part in the operation of any sector in a democratic political system. The so-called good governance is a combination of accountability, transparency and participation. During this period of time, Georgian media were quite active in covering the processes that unfolded in the spheres of security policy and sector. As mentioned earlier, the NGO sector also communicated with the authorities. Relations between them were not always perfect and this will be discussed later. However, from the viewpoint of the security sector reform, it is important to emphasize that the Defence Ministry formalized these relations through a cooperation memorandum, while the Prosecutor-General's Office promoted implementation of the so-called community prosecution project which implied a dialogue with the public and its involvement in developing crime prevention measures locally. It is possible to say that the project which was piloted in Mtskheta District during the given period of time reinforced human security.

According to a report published by well-known US non-governmental organization Freedom House in early 2007, Georgia ranks as a partly free country along with Moldova, Macedonia, Albania, Armenia and Kyrgyzstan. Although a schematic approach and simplifications are inevitably present in these kinds of reports, the autumn 2007 crisis demonstrated that Georgia still has a long way to go before it builds a stable democratic political system. The Freedom House report does highlight the successful reform of state bureaucracy and law enforcement and security agencies. However, the report also notes the inflexible stance of some officials on the settlement of conflicts, the lack of professionalism, the executive branch's influence over the judiciary and the difficult conditions in prisons.

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<sup>151</sup> Interview with Supreme Court Deputy Chairman Zaza Meishvili, August 2007

<sup>152</sup> The 24 Saati newspaper, 5 February 2007

<sup>153</sup> The Declaration of the NATO summit in Riga, 29 November 2006, <http://www.nato.int/docu/pr/2006/p06-150e.htm>

<sup>154</sup> The law On Human Rights Ombudsman of Georgia, Article 4

The 2006 study *Democratising Security in Transition States* which examined the Georgian security sector also contained serious criticism.<sup>155</sup> The study did note, however, that Georgia applied international and especially US experience in developing the security sector's legislative framework more extensively than Armenia or Azerbaijan. Authors of the study spoke positively about the changes in the police and the activeness, awareness and greater freedom of the civil sector and the media but identified problems in terms of the accountability of law enforcement agencies. Overall, the Georgian security sector is described as partially transparent as the report notes that the belief that the security of a state only implies effective defence of that state against external enemies and secrecy of particular issues remains pervasive.<sup>156</sup> I believe that, against the background of the positive dynamics described above, the controversies of the security policy and system reform in Georgia stem from a number of objective and subjective problems which often create dilemmas.

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<sup>155</sup> Eden Cole from the Geneva Centre for the Democratic Control of Armed Forces says in the study that a questionnaire survey has shown that "Despite the "Democratic "Rose revolution", a consensus emerged that security sector oversight has not improved in Georgia", *Democratising Security In Transition States*, Editors Katrin Kinzelbach and Eden Cole, UNDP, 2006, Printed by RENESANS, Slovak Republic, p.26

<sup>156</sup> Ibid, pp 27-33

## Dilemmas of Security Sector Reform

A review of the Georgian security sector shows that the country has numerous mechanisms for the development and implementation of security policy according to democratic standards. Strategic guides, legislation and development of institutions make it possible to combine the hierarchy and secrecy required in this sphere with accountability and the principle of checks and balances. However, the fact that Georgia is a young state involves a number of objective and subjective problems and makes it impossible to speak of immediate introduction of the best democratic practices in the Georgian security sector. Consequently, there were collisions of the rule of law principle with the imperatives of security in the process of security sector reform in 2004-2007. The process has been affected by legislative and procedural shortcomings. Overall, the Georgian security sector still faces dilemmas, which was one of the reasons for the November 2007 political crisis.

Several problematic areas of security sector management were highlighted in the previous section. Specifically, the budgets of the defence and law enforcement agencies were not sufficiently transparent, which was largely the result of the operation of non-budget funds that provided aid to the army and the law enforcement bodies in 2004-2005. The fact that, until recently, the state's defence budget was amended frequently posed another problem. The ratio of defence spending to the country's GDP also diverged from the European standard. It has also been noted that the websites of some agencies of the security sector provided outdated and inaccurate information. When the mechanisms for parliamentary control were discussed, it was emphasized that the close ties between the executive and the legislative branches that developed after the revolution created problems in terms of checks and balances and accountability of different branches. A number of local and international observers have essentially identified the same problem in the judiciary. It has been suggested that the military and the police services have not been completely separated from each other. The most important point that the critics of Saakashvili's government have made is linked to the problems of endorsing the declared imperatives of rule of law and protection of human rights in practice, especially in the process of combating crime, exercising control over prisoners and replacing staff in the state institutions.

All of the aforementioned is linked to security policy and system. However, most of the shortcomings in the spheres of rule of law and protection of human rights stemmed from dilemmas encountered in specific situations rather than the lack of political will. The government that aspires to adopt NATO standards and join NATO understands the importance of the rule of law and human rights. This is essentially how the Saakashvili government is viewed abroad. There are, however, certain dilemmas in the course of reform that have lead to dangerous deviations from the democratic practice of the security sector's operation:

1. Legitimate attempts to change the inefficient mechanisms for the settlement of the country's territorial conflicts heighten tension in the conflict zones.
2. Development of the state and reform of the security sector require speed, mobilization of resources and implementation of unpopular measures (such as staff changes), which leads to inflexibility in decision-making and crudeness of procedures. Also, any revolution produces informal ties between the leaders of the country. This is detrimental to the democratic principles of checks and balances and accountability.
3. As mentioned earlier, the newly-reformed police and special security services are fighting against organized crime and corruption which are considered to be a threat on national scale in Georgia. This is also essential for human security since protecting law-abiding citizens from criminals is as important as protecting them from the state. However, there have been instances of excessive use of force in this process and the investigation of these cases did not win sufficient trust.

4. Not only do the media reflect the reality but they also create it. This applies, in particular, to electronic media and the situations where the standards of media ethics are not sufficiently developed and the level of professionalism among journalists is not high enough. Consequently, the media could be a risk factor from the viewpoint of national security. Imposing different types of restrictions on the media is, however, equally dangerous. There were elements of confrontation in relations between the government and the media in 2004-2007. Despite adopting liberal legislation in this field, the government found it difficult to prove that some of its actions vis-à-vis the media were justifiable.

Along with the valid examples of these and other problems, there is also the criticism voiced by the government's political opponents, NGO representatives and lawyers of victims and defendants which is often groundless, stands out for the weakness of substantiation and creates political tension. Coupled with the government's imperfect communication policy, this makes it difficult to understand the gist of a given case. The fact that some of the government's domestic opponents combine the talk about violations of human rights with statements against the integration with the West, tolerance and civil values, i.e. against cooperative security, also affects national interests and security. This is a sign of a lack of accord in the public over the so-called societal security which implies protection of the society's identity and values.<sup>157</sup> Although, according to a number of studies, a majority of the population supports Georgia's accession to NATO and the EU, it is not a completely conscious choice for many. Quite a significant part of the country's population does not share the fundamental values of liberal democracy, while these very ideas and values are an essential element of the security sector reform.

For example, as the education reform which aimed to eradicate corruption and promote critical thinking in schools was being implemented, school teachers staged anti-reformist rallies and statements were made that the aforementioned changes threatened the national identity.<sup>158</sup> In June 2005, prominent representatives of the academic circles demanded recalling of a draft law which was to make it easier for citizens to change their first and last names. The authors of the letter thought that this would endanger aristocratic family names.<sup>159</sup> These and other people subsequently protested against structural and staff changes in universities. The disputed issues included introduction of unified national exams compliant with Western standards, new tests for long-serving professors, abolishment of the old academic councils, curtailing of the monopoly of the Academy of Sciences over scholarly research and so on. The implementation of these fundamental changes could, of course, have raised specific and substantiated questions. However, the predominant view among the protesters was that a majority of Georgian universities had served the nation in a professional manner prior to the reform, while the new government was interested in effective destruction of the education system and degradation of the nation.

The dichotomy between the government and the opposition over the national security policy involved some groundless steps on the latter's part. Regardless of the reasons for the opposition's gradual radicalization – whether it was the bitter competition for power, the arrogance of the revolutionary government, the disputes over constitutional amendments and electoral legislation or the strengths and weaknesses of the anti-crime campaign – the lack of opposition's involvement in the adoption of the National Security Concept did not promote development of strategic discourse. The opposition did not suspend its boycott of plenary sessions when parliament approved the document in July 2005. An opposition leader noted that the political spectrum was not ready to discuss such comprehensive and theoretical issues, emphasizing that the Concept was a mere declaration and resembled a newspaper article. Some representatives of the NGO sector also suggested that the document was not serious

<sup>157</sup> See *Values of Georgian Society: Reports, Analysis, Recommendations*. The Open Society – Georgia Foundation, 2006.

<sup>158</sup> The Mze TV channel, 15 September 2004.

<sup>159</sup> The Rezonansi newspaper, 15 June 2005



enough because it lacked a classified part.<sup>160</sup> Comments like these indicated that a number of the government's opponents did not understand the essence and hierarchy of the documents that determine security policy.

Some of the reviews and findings on the security sector reform produced by NGOs revealed a need for enhancement of their expertise. One such report contained criticism over the lack of references to a reserve disciplinary code in the law On Military Reserve.<sup>161</sup> The authors should have known that, according to the commonly accepted practice in Georgia, a single disciplinary charter applies to all individuals in military service regardless of whether they are conscripts, contract soldiers or reservists.

The fact that NGOs disseminated unverified information also created tension and uncertainty in relations between the government and the civil sector in the process of security sector reform. For example, the Human Rights Center reported that an inmate had been killed in a prison as an act of revenge, while the Prisons Department later said that the individual was alive and remained in prison.<sup>162</sup> The Georgian civil sector also reported that, according to a survey conducted by the International Republican Institute in 2007, over 70 per cent of the country's citizens were afraid to openly express their political views. Naturally, this kind of data raised, first and foremost, questions about the national security sector. It turned out, however, that the actual results of the survey were different: Over 70 per cent of the respondents believed that some citizens could have had such fears, while only 12 per cent of them thought that everyone feared repression in Georgia. The fact that a similar survey conducted in Lithuania had produced a "worse" result is interesting in terms of the analysts of the attitude of Georgians to their security sector.<sup>163</sup>

It could also be noted that, along with fulfilling his direct duties, the human rights ombudsman, who is one of the leading officials responsible for overseeing the activities of security and law enforcement bodies, also made what sounded like emotional and controversial political statements which triggered disputes with law enforcement bodies and the judiciary. Among these statements was his call for the resignation of the interior minister when several high-ranking police officials were accused of murder. According to the Georgian press, he said during the April 2007 parliamentary hearings that "one cannot hope for justice unless one's brother in an official".<sup>164</sup>

The argument between the human rights ombudsman and the Supreme Court is an interesting example of a controversy in the field of civil oversight as it revealed a lack of accord over responsibilities and hierarchy and was directly linked to a court case that was to be considered within the framework of security policy. In August 2007, the human rights ombudsman demanded disciplinary sanctions against a judge because the latter had allegedly denied Irakli Batiashvili the right to a fair trial when he was arrested and charged with supporting an anti-Constitutional rebellion in 2006.<sup>165</sup> The human rights ombudsman said that the judge had passed the sentence on the basis of personal views and the evidence "the validity of which was doubtful". In response to this, the press center of the Supreme Court said that an appeal against the sentence passed on Batiashvili had been filed and was yet to be considered and hence the human rights ombudsman's statement was an attempt to act as a court of appeal. According to the Supreme Court, this was

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<sup>160</sup> The Rezonansi newspaper, 9 July 2005

<sup>161</sup> *Reform of Georgia's Defence Sector*, Transparency International Georgia, Report: January 2007, [www.transparency.ge](http://www.transparency.ge)

<sup>162</sup> The 24 Saati newspaper, 4 May 2007

<sup>163</sup> See <http://www.iri.org/eurasia/georgia/pdfs/2007-04-04-Georgia-Poll.ppt#455,10>, Are people in Georgia afraid or not to openly express their political views? Also, interview with a representative of the International Republican Institute, November 2007.

<sup>164</sup> The 24 Saati newspaper, 27 April 2007

<sup>165</sup> Irakli Batiashvili, who had served as chief of a special service and later as chairman of the Parliamentary Committee on Defence and Security in Shevardnadze's time, joined the opposition after the revolution. During the 2006 rebellion in the Kodori Gorge, he was arrested and charged with providing intellectual support to rebel leader Emzar Kvitsiani.

a violation of Paragraph 5 Article 84 of the Constitution whereby a court's decision can only be revoked or altered by another court.<sup>166</sup>

Developments in 2003-2007 also demonstrated that the organized crime groups that were deemed to pose a threat on a national scale and the members of the disrupted networks of corruption were thinking of revenge and therefore trying to capitalize on the instances of violation of the principle of rule of law by the authorities and the inevitable social cost of reforms. For example, both the opposition parties and the "prominent faces" acting inside or outside these parties who had lost personal influence as a result of the demise of the Shevardnadze regime<sup>167</sup> capitalized on the discontent of ordinary employees who had lost their jobs after massive layoffs, the Soviet-time creative unions who had had state funding withdrawn, shadowy businessmen and small traders who opposed the introduction of cash registers.

According to a representative of the political opposition, Russia was harbouring well-known Georgian criminals and trying to use them against the Georgian state.<sup>168</sup> Although it is difficult to obtain evidence of such ties, it is clear that the criminal groups would be particularly hostile towards the government well known for carrying out anti-crime operations and adopting legislation that targeted the so-called crime bosses. The human rights ombudsman's office had also received reports that criminals and people who had close ties with criminal groups had been collecting money both inside and outside the country to sponsor anti-government activities. The human rights ombudsman did not exclude the possibility that the information was correct.<sup>169</sup>

It has to be noted that the political opposition considered the government's aforementioned acts to have been excessively repressive or not serious.<sup>170</sup> The question of repressions will be discussed later. As for the suggestion that the moves were not serious, it is countered by extensive evidence of reaction by criminal circles ranging from arrest or flight of crime bosses to the involvement of the friends and relatives of criminals in anti-government protests.<sup>171</sup>

The fact that there were people with criminal record among the arrested activists of Igor Giorgadze's so-called Justice Party<sup>172</sup> is a sign of political revanchism of criminals and the old networks of corruption. Igor Giorgadze himself was a high-ranking official during the period of time when crime, corruption, politics and economics were amalgamated completely in Georgia.

A number of public servants as well as individuals who had been involved in international aid programmes faced criminal charges after the revolution, which drew criticism from human rights watchdogs and the lawyers of defendants both in Georgia and abroad. It is noteworthy that those who defended these individuals cited human rights and the rule of law rather than calling for return

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<sup>166</sup> The Rezonansi newspaper, 7 August 2007; the 24 Saati newspaper, 6 August 2007.

<sup>167</sup> The term has been used by the Georgian media to describe prominent journalists and politicians, as well as the so-called experts who were expected to provide political analysis in talk shows and during various seminars. There was also the so-called upper class intelligentsia: A group of educated people with oratorical skills who had enjoyed sinecures and other privileges in the late Soviet and post-Soviet periods.

<sup>168</sup> The Rezonansi newspaper, 1 May 2006

<sup>169</sup> Interview with the human rights ombudsman, April 2007

<sup>170</sup> For the first time in Georgian history, the mere fact of being so called Thief in Law, i.e. having the title of a leader or a mediator of a Soviet/post-Soviet type of organized criminal groups became a punishable offence. Some of the opposition politicians thought that this particular provision was repressive or was not serious. They argued that an individual can only be punished for a specific crime. Some of them also suggested that the so-called Thieves in Law would change their title, which would render the aforementioned legal acts ineffective.

<sup>171</sup> Law enforcers as well as some NGO representatives have noted that friends and relatives of criminals took part in the opposition rallies in October and November 2007. Confidential interviews conducted by the author, November 2007.

<sup>172</sup> For the information on this party, see Chapter 3, Strategic discourse and security problems in Georgia – principles for defining sector, p 27

to the corrupt and criminal past.<sup>173</sup> Legal disputes often transformed into political debate when journalists, defence lawyers and the political opposition made similar statements about inhumane nature of the Saakashvili regime.<sup>174</sup>

It is self-evident that the discourse of the critics must be democratic if the state perpetrates excessive use of force or injustice during anti-crime operations, investigation or court proceedings. However, these and other examples show that the criminal and corrupt groups are able to effectively use legal argumentation to disrupt the establishment of liberal democracy, particularly when the state officials are inexperienced. The fact that individuals who hold undemocratic ideas and/or are corrupt are being viewed as political prisoners fighting for democracy is a challenge for the modern security policy.<sup>175</sup>

During the protests that were staged in October and November 2007, as well as in TV debates along with the post-revolution opposition, the government was confronted by former officials from the Shevardnadze government and the part of the business elite where Badri Patarkatsishvili held a special place.

Patarkatsishvili, who was the sole owner of the popular Imedi TV station, also showed interest in other spheres of business. His role in Georgian politics and security is, however, linked to Imedi and his oppositionist statements. Patarkatsishvili's rivalry with the government became obvious in the spring 2006 when he said that businessmen had been forced to donate money to the fund that provided aid to the law enforcement bodies<sup>176</sup>. At the same time, Imedi devoted an increasingly large amount of attention to criticism targeting law enforcers. By the autumn 2007, Imedi was viewed as a mouthpiece of the political opposition. The government's representatives refused to participate in the channel's talk shows. Patarkatsishvili personally sided with the opposition during the November 2007 events. The people who were directly involved in these events or observed them noted that Imedi was trying to mobilize the opposition-minded masses in the same manner that the Rustavi-2 TV channel that opposed Shevardnadze had done during the Rose Revolution.

Imedi and Patarkatsishvili himself highlighted the violations of human rights and the rule of law principle committed by the representatives of the Saakashvili government. Ultimately, Patarkatsishvili even voiced his desire to depose "Saakashvili's fascist regime". The TV channel did not express the editorial opinion so openly though some of its reports, the selection of participants for talk

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<sup>173</sup> The lawyers of Giorgadze's supporters protested against the decision to hold the court proceedings behind closed doors on the grounds of national security. They also questioned the validity of evidence and arguments presented by the Prosecutor's Office. The Prosecutor's Office has its counterarguments regarding this protest. More extensive information would be required to opine on the objectiveness of the court proceedings.

<sup>174</sup> Interestingly, in October 2007, defence lawyer Eka Beselia who had been involved in a number of trials of representatives of the old or the new government bureaucracy became a leading member of the party formed by Irakli Okruashvili, former minister of defence who was renowned for his militarist rhetoric and was later charged with corruption.

<sup>175</sup> Igor Giorgadze and other not-so-democratic opponents of the Saakashvili government whose ties with Russian mafia and special services raised serious suspicions were also able to find allies in the West. Along with Georgian lawyers, they also resorted to the service of highly-paid American lawyers. The generalized findings of these lawyers about inhumane nature of Saakashvili's rule appeared in a number of Western newspapers and magazines. The ranks of the authors of critical pieces were not limited to the experts who aimed to pass unbiased judgments about the situation and represented organizations like Human Rights Watch, International Crisis Group and Conciliation Resources. These organizations are concerned with human rights and peace. They have employees who have been working in Georgia for many years and are naturally concerned about a lot of things in the transitional country from the ideological, normative and simply human points of view. However, articles like the one that was published in Harper's Magazine raised suspicions that the author was carrying out a political order against Saakashvili. The author, Ken Silverstein, wrote that the Georgian government perpetrated violations of human rights with a silent permission from the Bush administration. He also said that one of Giorgadze's supporters who faced trial had three children and was a member of political opposition, emphasizing that, according to the defendant's US lawyer Melinda Safara, the Saakashvili government did not want to make the trial public because neither this individual nor the other 11 defendants were guilty. He noted at the end of the article that Randy Scheunemann, a former advisor to Donald Rumsfeld, was a lobbyist of the Saakashvili government in the United States. Harper's Magazine, July 10, 2007

<sup>176</sup> The 24 Saati newspaper, 1 April 2007

shows as well as the structure and style of these talk shows raised suspicions of bias.<sup>177</sup> The signs of bias in editorial policy and especially the backgrounds of a leading Imedi journalist and Patarkatsishvili himself made it difficult to believe that these individuals were genuinely concerned with law and justice.

A native of Tbilisi, Patarkatsishvili had been linked with a number of criminal stories in Russia. Fugitive Russian oligarch Boris Berezovskiy was believed to be his friend and business partner. The Prosecutor's Office of the Russian Federation had also instituted criminal proceedings against Patarkatsishvili. As oligarchs were being persecuted under Putin, Patarkatsishvili moved to Georgia, bought the Marriage Palace in central Tbilisi and secured friendship and trust of Shevardnadze's closest entourage as well as Aslan Abashidze, authoritarian chairman of the Ajarian Supreme Council. The latter rose to power and turned Batumi into the second political centre that competed with Tbilisi after his political rival died in suspicious circumstances in a clash that occurred in Abashidze's residence. Giorgi Targamadze, who served as head of Abashidze's press centre and later as a prominent figure of his Revival party, was subsequently made one of the chiefs and a leading journalist of Patarkatsishvili's TV channel.

Members of Saakashvili's political team believed and still believe that, during and after the 2003 revolution, Patarkatsishvili tried to establish close ties with the new leaders and create the kind of environment for the fulfilment of his economic and political ambitions that oligarchs had enjoyed in Russia under Yeltsin. At the very least, this implied favouritism and monopolistic influence over certain sectors of the economy. According to Saakashvili's opponents, the new government did not shy away from obscure business deals either. However, Patarkatsishvili's ambitions and his background were at odds with Saakashvili's plans for the strengthening of the state and political integration with the West. It was not by chance that, when Patarkatsishvili finally made his political debut during the crisis of October and November 2007, he stated that Russia was near while the United States was far away.

As mentioned earlier, citing the principles of rule of law and human rights was the main element of Patarkatsishvili's oppositionist strategy. However, Patarkatsishvili's plans changed on 7 November 2007 when the government used police special units to disperse the protests that had been taking place for several days, which led to clashes, suspension of Imedi's broadcasts and declaration of a state of emergency. To be more specific, his real plan became obvious. It was not simply about Patarkatsishvili's decision to stand in the presidential election which Saakashvili had called to defuse the political crisis resulting from instability. What mattered most was the publication of secret recordings made by the Georgian special services whose content Patarkatsishvili himself never refuted. According to the tapes, he was prepared to sponsor staging of vote rigging, mass protests and neutralization of the interior minister, i.e. essentially to organize a coup in the country.

It was therefore becoming obvious that the completely undemocratic forces that had been criticizing the government in a radical manner posed a serious threat to the security of the state. This does not mean, however, that there were no reasons at all to criticize the revolutionary government. The fact that a large number of people turned up at the November rallies and the evidence of excessive use of force by the police on 7 November<sup>178</sup> indicate that there were shortcomings, mistakes and irregularities in the general political and legal reforms as well as the processes that had taken place in the security sector. The fact that the inexperienced government of a young state had faced a dilemma accounted for most of the problems.

<sup>177</sup> Based on my personal impressions, I can say that the audience of the talk shows which was present in the studio along with the guests was usually pro-opposition. Meanwhile, the host was interested in instigating a scandal rather than understanding the topic of discussion. Imedi's popular weekly programme *Droeba* often promoted a blind trust in the Orthodox Church.

<sup>178</sup> See *Crossing the Line, Georgia's Violent Dispersal of Protestors and Raid on Imedi TV*, Human Rights Watch, Volume 19, No 8 (D), December 2007

As noted above, settlement of the conflicts that had arisen on the country's territory was one of the government's primary objectives from the viewpoint of national security. As the Rose Revolution penetrated Ajaria in the spring 2004, the revolutionary government also hoped to restore control over the territory of the former Autonomous District of South Ossetia. However, unlike Ajaria, South Ossetia was a conflict zone that was mostly controlled by a separatist de facto government which relied on Ossetian ethnic nationalism and enjoyed protection from the Russian peacekeeping forces. It was logical on Saakashvili's part to aspire not only for a rapid settlement of the conflict through restoration of the country's territorial integrity within the borders recognized by international law as an end objective, but to combat the smuggling of goods via the conflict zone and to seek change of the Georgian-Ossetian negotiating format. The latter was viewed by Tbilisi as "three against one" (The coordinating commission that had been established in this format comprised representatives of the Russian Federation, the North Ossetia-Alanya autonomy of the Russian Federation and the de facto South Ossetian government who usually teamed up to confront the Georgian government's representative – D.D.) as the involvement of OSCE representatives was not particularly effective.

Unfortunately, these efforts led to escalation of tension. In 2006, Tbilisi took a new and encouraging step by forming an interim administration in the conflict zone. A former member of the de facto government was appointed its chief. It was also announced that a special state commission would discuss the principles for restoration of South Ossetia's autonomy. This did not, however, reduce distrust and tension.

It is clear beyond any doubt that the mere existence of the separatist government and its uncompromising attitude were the main factors behind the tension. The uncompromising attitude was reinforced by the political and material support provided by the Russian government bodies and business. However, along with these political and economic factors, the mutually reinforcing dynamics of Georgian and Ossetian nationalism were also an important factor in the persistence of the conflict and Tbilisi could not or did not acknowledge this. The fight against smuggling and the restriction of travel from the conflict zone to Tbilisi with Russian passports and without visas also led to deterioration of living standards for a lot of ordinary people, while the proportionality and appropriateness of restrictive measures was not substantiated adequately at the very least.<sup>179</sup>

Coupled with the financial and propagandist resources of the separatist government, nationalism prompted thousands of young Ossetian to take up arms and go to the trenches. This was not neutralized by the formation of the interim administration in the Georgian-controlled part of the conflict zone and the attempts of the Saakashvili government to ignore and isolate the separatists in 2004-2007. To Saakashvili's credit, unlike Shevardnadze, he has focused on building a civil nation. "To those who hate Ossetians I will be an Ossetian", the Georgian president said on a number of occasions. His tactic for the settlement of conflict did, however, draw criticism from some Western politicians and analysts who advised the Georgian government to improve communication with the separatist regime, not just the loyal interim administration. They also noted that the Georgian government had only demonstrated partial readiness to assume responsibility for the injustice perpetrated in the past.<sup>180</sup>

Tension in Georgian-Abkhaz relations heightened in 2004-2007 for the same reason: The Georgian government was trying to resolve what had been described as a "frozen" situation but was essentially an impasse. This angered both the Abkhaz and the Russian sides that were much more satisfied with the status quo. As was the case with South Ossetia, Tbilisi's completely logical aspirations collided with the vision and interests of the Russian and the Abkhaz elites, as well those of the Abkhaz, international and even some Georgian NGOs that found it difficult to implement confidence-building projects. The Georgian government considered these kinds of activities to be ineffective and this opinion may not have been completely groundless. However, the sceptical attitude of the Saakashvili government to the

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<sup>179</sup> *The Kekelvi's Lesson – With Unaided Eye*, Davit Darchiashvili, *Newsp. 24 Hours*, 5 November, 2004

<sup>180</sup> *Georgia's South Ossetia Conflict: Make Haste Slowly*, ICG Policy report, 7 June, 2007



domestic and international groups promoting a culture of peace was, to some extent, like throwing the baby away with the bath water.<sup>181</sup> At least the international diplomatic circles voiced their concern over the weakening of the Georgian-Ossetian and the Georgian-Abkhaz dialogue. They were also worried by the intensive development of the Georgian armed forces which took place against the background of disruptions in the dialogue.

Emergence of informal teams and weakening of the democratic principles of participation, accountability and checks and balances has always been a dangerous trait of revolutionary governments. The Saakashvili government was not able to avoid these problems either. In stable liberal democracies too, representatives of the different branches of power sometimes form alliances with each other or with influential groups of the society and these alliances affect politics and especially the security sector.<sup>182</sup> However, informal ties between people in power and inadequacy of procedures and accountability mechanisms pose a stronger threat to the rule of law in young democracies and countries in democratic transition where institutions are fragile and political culture is still influenced by the legacy of authoritarianism and clans.

The government believed that its primary objective was to rapidly implement the painful and inevitable reforms including privatization, modernization of the law enforcement, security and education sectors and change of situation in the conflict zones. At the same time, strengthening of ties with strategic partners – Ukraine in particular – and restoration of the infrastructure (roads and buildings) were also deemed to be immediate objectives. Naturally, all of this involved spending of budget money in a country which did not have a strong tradition of planning policies and expenditures. Prior to the revolution, the country's budget was constantly sequestered due to the failure to deliver on the revenue side. The situation has changed in a radical manner since 2004. However, representatives of the NGO sector who conducted monitoring spoke of a kind of a revolutionary negligence in the spending of increased revenues and specifically in the management of the president's and the government's special reserve funds.<sup>183</sup>

Naturally, the government did not agree with such findings and the results of monitoring could not possibly have been flawless. However, the fact that parliament subsequently amended the legislation that established the rules for management of reserve funds was an indirect acknowledgement that there might have been instances of unlawful spending in the past. The amendment introduced simpler procedures for unplanned spending.<sup>184</sup>

The monitoring report on the president's and the government's reserve funds also noted that some of the expenditures were classified and hence not subject to public accountability. Security sector's expenditures are sometimes classified in countries with long-standing democratic tradition too. However, the Georgian government faced a dilemma as it attempted to resolve the question over the years.

<sup>181</sup> The projects that promoted people's diplomacy or informal dialogue and were sponsored by Western foundations had not produced any tangible results over the years in terms of bringing the parties to the conflict closer to each other. These projects did, however, provide Georgian and Abkhaz societies with an opportunity to communicate and eliminate stereotypes.

<sup>182</sup> Robert A. Heineman, *Political Science: An Introduction*, The McGraw-Hill Companies, Inc. 1996, p. 106-107

<sup>183</sup> The authors of one such financial monitoring survey thought that 70 per cent of spending from the president's reserve fund for 2004 qualified as inappropriate use of money. See *Georgian Government under the Sunshine*, Final Report IV, GYLA, Tbilisi, 2006.

<sup>184</sup> The original version of the Georgian law on the budget system said that the president's reserve fund was established in order to make money available during natural and other kinds of disasters and to meet other unplanned commitments of the state (Article 13). The phrase "unplanned commitments of the state" was later changed to "other unplanned payments of the state". It is possible to argue with the authors of the monitoring report who unequivocally state that sponsoring several visits of MPs abroad and the days of Georgia in Ukraine in 2005 was a clear violation of the law. It is, however, clear beyond any doubt that the formula introduced through the amendment rendered it easier to explain this kind of spending. The authors of the monitoring report also noted that the spending from the president's reserve fund exceeded the amount of money allocated for the fund in the budget and these expenditures were later reassigned to different articles of the budget (*Georgian Government under the Sunshine*, Final Report IV, GYLA, Tbilisi, 2006, p 7).

According to the official explanation, a number of military purchases could have been more transparent in a normal situation. Georgia, however, faced restrictions on Western arms markets until recently, while Russia could thwart Georgia's arms trade deals in the post-Soviet area. Consequently, the Georgian Defence Ministry did not deem it appropriate to publicize information on a number purchases in advance.

At the same time, the Defence Ministry leadership often made non-military purchases (construction, supply of clothing and food, etc) without open and transparent tenders, citing force majeure, i.e. the need to make a purchase without any delay. As it turned out after Irakli Okruashvili's resignation as defence minister, the arguments lacked substantiation and there might have been irregularities and corruption.<sup>185</sup>

Suspensions of irregularities or corruption need to be confirmed or refuted through investigation. It has to be noted that the Prosecutor's Office was quite active in this respect in 2004-2007. At the same time, there were reports in the media which suggested that the lack of transparency and confusion of responsibilities in decision-making and implementation was a persistent problem, while the government failed to provide substantiated explanations in a timely manner. The press reported, for example, that the Tbilisi Mayor's Office had spent 150m lari under the article "secret" costs in 2005-2006. Although it can be disputed whether a municipality has anything to do with state secrets, representatives of the Mayor's Office said that the aforementioned information was classified because there are some communicational infrastructures in the city "that cannot be monitored by everyone. In certain cases, it is a military or some other kind of a secret".<sup>186</sup>

Personal ties and a team spirit that are especially characteristic of revolutionary governments often came at odds with the principle of functional division of positions and branches of power. Since 2004, the opposition had spoken of a so-called night government which was allegedly composed of several individuals trusted by the president and made all the strategic decisions. Consequently, according to the government's opponents, a majority of MPs and a number of ministers who were not part of the aforementioned circle acted as mere bit players. Both the political opposition and the critical-minded NGOs suggested that the country's strategic course and the agenda of reforms were primarily determined by non-governmental think tank Liberty Institute and some of its former members who had joined the government.

The Liberty Institute's role in the modern history of Georgia is an interesting subject of study by itself. The organization always stood out for its ability to generate and advocate political ideas. It was not, however, the only civil sector organization that influenced Georgian polity in Shevardnadze's time or during and after the revolution. Also, the people who had been involved with the Liberty Institute at different times joined opposing political camps in 2004-2007. The suspicions regarding the power of Saakashvili's private "night" government are also exaggerated or, to be more precise, unsubstantiated. Obviously, the people who had demonstrated energy and leadership during the revolution and had subsequently joined different branches of power maintained personal and business contacts during working and after-work hours. Also, as noted earlier, decision-making procedures were not established clearly or followed strictly in every particular field or case. However, laws and government decrees were always legitimized through parliament's and the cabinet's approval. As for the fact that the influence of some individuals in the political or administrative elite is not always proportional to their official rank, it is an eternal attribute of politics.

Naturally, informal ties and the discrepancy between positions and actual influence in particular created problems which also affected the security sector. For example, the secretary of the National Security Council was much more influential when Ivane Merabishvili held the position than during

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<sup>185</sup> The 24 Saati newspaper, 8 June 2007

<sup>186</sup> The 24 Saati newspaper, 19 April 2007

Konstantine Kemularia's time in the office. The office of the secretary is likely to become strong again following former Education and Science Minister Aleksandre Lomaia's appointment to the position.<sup>187</sup> As mentioned earlier, the Defence Ministry developed extremely close ties with the Parliamentary Committee on Defence and Security after the revolution, which increased the risk of reduction of the necessary distance between the executive and the legislative branches and consequent weakening of democratic civil control. The situation was complicated by the fact that the political opposition was not represented in the Group of Trust which was formed inside the committee to oversee classified spending.<sup>188</sup>

The fact that the procedural and financial violations that had taken place in Okruashvili's time as defence minister were only made public when he resigned and joined the opposition can serve as an example of insufficient level of the committee oversight over the defence sphere. It is also noteworthy that the session protocols of the Committee on Defence and Security that are published on parliament's website are quite brief and the information on the committee's current or upcoming activities is not updated in a timely manner.<sup>189</sup>

The emergency army draft declared by the president in January 2006 can be cited as an example of how procedures are ignored when urgent needs arise in the security sphere. A month after the end of the autumn draft envisaged by the law, the president demanded that another 1,000 people were drafted. According to some experts, this indicated mistakes in the planning of the draft and was also a violation of the law: An emergency draft required either declaration of a state of emergency or a relevant amendment to the law On Military Duty and Military Service.<sup>190</sup>

Political officials were often involved in medium- and low-level work of the state system, which resulted in micromanagement. For example, direct participation of ministers in the planning and implementation of special operations was not uncommon in the realm of security sector and policy. However, the flaws in the vertical or horizontal separation of procedures or responsibilities could have been caused by a deliberate sacrificing of democratic forms of rule to the revolutionary speed and/or the appeal of personal power as much as by the deficit of cadres and the lack of experience.<sup>191</sup>

The personnel policy was another problematic sphere where Saakashvili's government encountered a dilemma that directly affected the security sphere. The personnel changes carried out in the law-enforcement agencies were prompted by the struggle against corruption and mostly gained approval both domestically and internationally.<sup>192</sup> The removal of a large part of Shevardnadze's generals from

<sup>187</sup> Just like Merabishvili, Lomaia was associated with the fundamental reforms implemented in the country and the revolutionary elite whose members had worked in the civil sector before joining the government.

<sup>188</sup> Representatives of the committee are not denying that this kind of a situation created possibility of a systemic problem in terms of democratic civil control and effective accountability. They have noted, however, that the committee has blocked a number of the Defence Ministry's initiatives despite the fact that the representatives of the executive and the legislative branches were friends and like-minded people. Members of the parliamentary majority have cited failure to agree on a specific candidate as the reason for the absence of an opposition representative in the Group of Trust. The law does not say anything as to what must be done in such a situation since members of the Group of Trust are elected by a majority of votes in parliament. Confidential interviews, August 2007

<sup>189</sup> The last protocol posted on the website by 27 August 2007 was that of the 18 May session. No information on upcoming sessions was available on the website.

<sup>190</sup> The 24 Saati newspaper, 24 January 2006

<sup>191</sup> This is how a number of high-ranking government representatives explained the lack of encouragement for professional initiative and inevitability of micromanagement at all levels of government. They suspected that a significant portion of officials had a negative attitude towards liberal reforms. (Confidential interviews, July 2007). Giga Bokeria, one of the masterminds of the revolutionary changes and an individual believed to be a member of the president's "private circle", spoke of problems in the field of human resources in his interview. See the 24 Saati newspaper, 20 April 2007. Incidentally, the fact that he did not support the introduction of a mixed system of governance in the country through the 2004 constitutional amendments and, at the same time, called for a more radical and quick reform of the judiciary indicates that the suggestions about his influence are exaggerated.

<sup>192</sup> See, for example, *Forget the Facelift, Think Overhaul*, by Marcela Sanchez, Friday, August 3, 2007; washingtonpost.com

the armed forces that were being reformed was also justified. All of this, no doubt, resulted in a considerable reduction in the scale of corruption: For example, not even the government's opponents are talking about mass corruption in the new police force, which was a common thing under Shevardnadze. The new government's strict policy also reached the notoriously corrupt customs service.<sup>193</sup> However, the changes instilled fear in those who had kept their jobs or had just been hired, which often was not balanced out by professional self-confidence or clear procedures and rules for employment and dismissal. This resulted in a high turnover of staff and discouraged ordinary law enforcers from showing initiative.<sup>194</sup>

Despite the fact that competitive employment was introduced in the security and law-enforcement bodies effectively for the first time in their history, personal attitudes of department heads or political leaders still affected the staffing policy. Irakli Okruashvili, who held the defence minister's post in 2004-2006, was particularly notable in this regard: he dismissed almost all department heads appointed by his predecessor Giorgi Baramidze, a member of the same political team. He also initiated a major personnel change in the General Staff.<sup>195</sup> Overall, many officers who had studied in the United States and Germany, were dismissed during these cadre changes.

Okruashvili explained this by stating that he was not satisfied with the professional qualities of the individuals he had dismissed. He emphasized that they were not sufficiently result-oriented and questioned the motivation and integrity of many of them.<sup>196</sup> Such suspicions may not have been groundless in a number of cases. For example, Okruashvili disbanded the defiant Monadire (Hunter) Battalion which was manned with the residents of the Kodori Gorge located in the Georgian-Abkhaz conflict zone. Emzar Kvitsiani, founder and leader of the battalion, later declared disobedience. However, Okruashvili proved to be no less wilful when he appointed his friends and acquaintances as new cadres in the ministry. He himself was eventually accused of abuse of office and embezzlement.

Neither the Defence Ministry nor the Interior Ministry had clear rules for the management of human resources until recently, or at least the public was not quite aware of precise criteria for testing, promoting or punishing employees. In the Defence Ministry, introduction of the Western model of human resource management began under Okruashvili's successor, Kezerashvili. It is however, too early to talk about a complete elimination of the revolutionary inertia and subjectivism in this extremely complicated sphere.<sup>197</sup>

Incidentally, the decisive role of the leadership's subjective will in personnel management is, to a certain extent, reinforced by the law. This is especially true as far as the security sector is concerned. The law on public service applies to the personnel of the police, armed forces and other special services unless special laws say otherwise.<sup>198</sup> And special legislation puts emphasis precisely on the greater discretion of department heads. Thus, for example, the law on the Finance Ministry's Revenue Service which was adopted on 29 December 2006 and introduced the unification of the Financial Police, the Customs Service and the Tax Service only provides basic rules for employment and social protection. It is the minister who determines specific rules for employment and service.<sup>199</sup> It is stipulated in the transitional and concluding provisions of the same law that the reorganization of the entire service, i.e. the unification of the Financial Police, the Customs Service and the Tax Service,

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<sup>193</sup> See, for example, "Why customs official prays", the Akhali Versia newspaper, 11-12 April, 2007

<sup>194</sup> Ibid. Also, confidential interviews with the Customs Service and police representatives, August 2007

<sup>195</sup> *Defence Reform Poses Crucial Civil Society Test For Georgia*, Tereza Freese, Eurasianet.org, Eurasia Insight, 4/07/05

<sup>196</sup> Ibid. See also the Rezonansi newspaper, 11 July 2005; the 24 Saati newspaper, 17 January 2006

<sup>197</sup> The Interior Ministry has also introduced new initiatives: According to the deputy minister, the practice of retraining officers who are up for promotion in the Police Academy and monitoring psychological state and managerial skills of officers is being introduced in the hard-to-reform Crime Police as well as the Patrol Police and the service of district police officers. A report at the meeting with NGOs, Bazaleti, 15 March 2008

<sup>198</sup> The law "On Public Service", Article 11, Paragraph 2

<sup>199</sup> The law On the Revenue Service of the Georgian Finance Ministry, Article 12, Paragraphs 1-2

can either be carried out gradually or at once through the minister's decree. The law also says that, if need be, the powers of the aforementioned subdivisions can also be separated through an individual administrative and legal act issued by the minister. The same part of the law states that appointments in the Revenue Service are made by the service chief or the minister and the relevant decisions are not subject to "the requirements that apply to decisions made on the basis of discretionary powers".<sup>200</sup> After the reorganization, all employees of the Revenue Service except for the service chief and his or her deputies were to be appointed for the period of six months or serve as acting officials.

The example of this law shows that a lack of cadres and a distrust accompanying revolutionary innovations were evident in the process of reforms, which undermined employees' "job security", i.e. stability of staff until recently. As noted earlier, the security policy in 2004-2006 was characterized by quite a liberal interpretation of procedures and existing laws. Naturally, this raised questions regarding the strength of the rule of law safeguards in Georgia. The anticrime and anticorruption policy of Saakashvili's government was the main focus of the criticism voiced by the government's opponents with regard to violations of the law and infringements on human rights.

Destruction of criminal and corrupt networks within the security and law-enforcement spheres as well as elimination of legal nihilism that had fuelled them and had been common among the public became one of the greatest priorities after the Rose Revolution. A lot of special operations were carried out. According to some reports, 18 policemen and 19 offenders were killed during special operations in 2005.<sup>201</sup> Simultaneously, the Financial Police carried out high-profile raids on commercial organizations whose managers were suspected of tax evasion. The raids were broadcasted by the media. The form of the media coverage of the anticrime and anticorruption campaign was controversial: experts believed that showing the faces of detainees and victims on TV screens constituted a violation of human rights.

Part of the opposition and some civil society organizations were particularly angered by the fact that the Supreme Court and the Council of Justice instituted disciplinary proceedings against some judges appointed in Shevardnadze's time. Human Rights Watch, an international human rights organization, said in its 2006 report that, while the punishment aimed to clear the courts of corrupt practices, the process was not sufficiently transparent and lacked procedural safeguards. Judges sometimes faced sanctions because of the way they had interpreted laws rather than because of committing ethical or disciplinary violations.<sup>202</sup>

The government's representatives denied these or other accusations, stating that international human rights organizations often relied on unverified information.<sup>203</sup> The government had basically replied in the same manner to the accusations that the reformed court had become dependent on the Prosecutor's Office and that, in a number of cases, representatives of the reformed law-enforcement system continued violating human rights and remained unpunished. Representatives of the media, NGOs and opposition parties, lawyers of victims and their family members, however, drew attention to such facts as the death of a pregnant young woman during a special operation in Kutaisi on 4 March 2004,<sup>204</sup> the assault on opposition MP Valeri Gelashvili which remained not investigated and detention of young people for compulsory drug abuse examination.<sup>205</sup>

Among high-profile criminal cases which involved killing of people by the police, the murders of Robakidze, Vazagashvili and Girgvliani were the ones that drew the widest response and tarnished the

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<sup>200</sup> Ibid., Article 22, Paragraph 5

<sup>201</sup> The Interior Ministry information, the *Rezonansi* newspaper, 1 May 2006

<sup>202</sup> The *Akhali Versia* newspaper, 15-16 January 2007

<sup>203</sup> The *Akhali Versia* newspaper 15-16 January 2007

<sup>204</sup> The *Rezonansi* newspaper, 1 May 2006

<sup>205</sup> The *24 Saati* newspaper, 23 June 2006



government's image considerably.<sup>206</sup> In the former two cases, the police officers had been on duty: One occurred during patrolling and the other took place during an anticrime operation. The investigation of Girgvliani's murder, however, demonstrated that several police officials had engaged in a personal conflict with him. A patrol police officer faced criminal charges for killing Robakidze and four police officers were convicted in the Girgvliani case. No law enforcers were punished for the murder of Vazagashvili as he was deemed to have been a member of a criminal group and killed in the course of a special operation.

Not only the families of the victims and their lawyers but also NGOs and a significant section of the political spectrum consider the investigation to have been biased in all three cases and believe that the court unconditionally met the demands put forward by the law-enforcement bodies. The government's opponents are saying that Vazagashvili did not resist the police when he was killed, while higher-ranking police official or officials had ordered Girgvliani's punishment. As for Robakidze's murder, an ordinary patrol officer was punished although other police officers who knew that Robakidze was innocent did not report this at the time. Girgvliani's case and the controversy it triggered were reflected in the reports by international human rights organizations.<sup>207</sup>

Naturally, both the judiciary and the investigation bodies have clear answers to all of these questions: The cases were investigated, those guilty were punished and the arguments presented by the defence were unsubstantiated.<sup>208</sup> In this situation, to clarify precisely which accusations against the government were groundless and which ones were not would require detailed analysis of these cases, which is beyond the scope of this research. There is no doubt, however, that the struggle against organized crime was accompanied by serious cases of arbitrariness on the part of law enforcers. The quality of investigation into these cases raised suspicions among a significant section of the public. The suspicions were reinforced by a logical assumption that many judges, who had doubts over their own competence and/or feared disciplinary proceedings, would have tried to pay as much attention as possible to the arguments presented by the police or the Prosecutor's Office acting on behalf of the state. These agencies, in turn, were likely to have had a corporate spirit which would have added subjective overtones to the process of investigation into cases in which law enforcers faced charges. It is noteworthy that both the human rights ombudsman and international organizations noted a gradual decrease in the number of apparent facts of violence on the part of law enforcers. At the same time, however, they were unhappy with the speed of response to existing complaints concerning violence. They also believed that the number of law enforcers who faced criminal charges for violent actions was too small compared to the number of complaints. Amnesty International specifically emphasized the slow pace of investigation of the possible disproportionate use of force by the special unit during the March 2006 prison riot in Tbilisi.<sup>209</sup>

Representatives of the judiciary themselves did not deny that there was fear or self-censorship among a considerable part of judges, which stemmed either from a lack of qualification or from the revolutionary enthusiasm of the new leadership of the Prosecutor's Office.<sup>210</sup> Personal will has been highlighted earlier as a decisive factor. In this respect, the following is noteworthy: An opinion prevailed in nongovernmental circles that the court would have been much stronger had the judiciary

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<sup>206</sup> The term "murder" does not imply the legal definition stipulated in the Georgian Criminal Code but social perception of the action and its result.

<sup>207</sup> <http://thereport.amnesty.org/eng/Regions/Europe-and-Central-Asia/Georgia>

<sup>208</sup> For example, the investigation as well as the court denied the existence of substantiated evidence proving that torture took place and that the perpetrators had received a relevant order from their superiors in the Girgvliani case in which police officers abducted Girgvliani because of insulting statements on his part and beat him (which resulted in his death). See the 24 Saati newspaper, 6 August 2007; also, interview with Supreme Court Deputy Chairman Zaza Meishvili, 14 August 2007

<sup>209</sup> Special unit soldiers were injured during the prison riot and several inmates were killed. Ibid. See also the 24 Saati newspaper, 27 April 2007, 24 Saati, 4 May 2007

<sup>210</sup> Confidential interview, August 2007

been led by one of the authors of the anticrime campaign, Prosecutor General Zurab Adeishvili – due to his personal energy and beliefs.<sup>211</sup> Uncompromising and immediate struggle against crime and corruption was necessary due to the scale of the threat and the imperative of human security. The struggle, however, was accompanied by procedural irregularities, instances of disproportionate use of force caused by the lack of competence on the part of individual law enforcers or by mistakes made in the process of their selection, weakness of the court and strengthening of the corporate spirit among law enforcers. Eventually, the aspiration to attain pressing security objectives was creating a ground for weakening the respect for the principle of rule of law, which was one of the main dilemmas of Saakashvili's security policy.

The existence of a dilemma in this situation is evident in what Saakashvili's radical opponents have described as "selective justice". They have said in political debates that not everyone receives the same kind of punishment for corruption, drug trade and other criminal offences, while law enforcers focus their attention on the criminal offenders who are not politically loyal or are not close to the government representatives. Such accusations are somewhat unsubstantiated and unfair: Any statement requires strong evidence and a trial to go beyond the sphere of political debates or rumours. Otherwise, a presumption of innocence applies regardless of whether we are talking about a violation committed by a person close to the government or the opposition. At the same time, many pro-government high-ranking officials or people close to them faced criminal charges in 2004-2007. This does not mean, however, that any such accusation should be ignored by law enforcers. Moreover, it seems that the problem of selective justice in combating crime did surface one way or the other. For example, there is a substantiated opinion that, despite increased toughness of Saakashvili's government towards those who commit offences involving narcotics, some drug dealers have remained unpunished. The fact that the police need to establish operational control over the criminal underworld has been cited to justify this.<sup>212</sup> At the same time, the flaws in the government's accountability and transparency or the aforementioned weakness of the judiciary branch created by themselves a systemic basis for "selective justice".

Protection of private property was another area where the dilemmas encountered in the process of laying foundation for the new Georgian state could be seen. Human rights organizations stated that property rights had been violated repeatedly after the revolution. Namely, procedures envisaged by the law were ignored when private buildings were demolished, flat ownership certificates were annulled and land ownership rights were revised. According to the Georgian Young Lawyers' Association (GYLA) chairman, the NGO examined the cases of demolishing of some 30 buildings by the City Supervisory Service in Tbilisi and concluded that there were often no documents that would as much as hint at the reasons for demolishing them.<sup>213</sup> GYLA also protested against the Mayor's Office decree which was issued on 20 July 2007 to launch proceedings for the annulment of ownership documents issued by the previous Tbilisi government in 1994-1999.

As with the aforementioned criminal incidents, establishing whether or not property rights were violated is a prerogative of an unbiased investigation rather than an analytical paper dealing with the security sector reform. Saakashvili's government sincerely recognized private property and market economy rights, which is confirmed both by the unambiguous foreign policy course of building closer ties with liberal democracies and the assessments made by international financial organizations. However, this does not mean at all that GYLA's statements are completely groundless. Giga Bokeria, a leading member of the parliamentary majority, placed the instances of private property confiscation in the context of the struggle against past unlawfulness when he said that, previously, privatization in Tbilisi and the regions had taken place in violation of the law and in exchange for bribes. However, he also said that, in some

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<sup>211</sup> Confidential conversations, September 2007

<sup>212</sup> Confidential interview, June 2007. It is interesting to note the deputy interior minister's statement on the traditions which prevail in the Crime Police and will take a long time to eradicate, Bazaleti, 15 March 2008

<sup>213</sup> The Rezonansi newspaper, 7 August 2007

cases, it was difficult to prove this because deals that were clearly illegal had been authenticated by a notary or through a court decision.<sup>214</sup>

Former Tbilisi Mayor Zurab Chiaberashvili explained that, after the revolution, the government discovered that even some sections of areas that are clearly public (for example, roads) had been privatized in Tbilisi, which created obstacles to urban planning and development.<sup>215</sup> It seems that the authorities began resolving the problem in a “simplified” manner under the next mayor, Gigi Ugulava. At the same time, areas were “vacated” for larger and richer investors who could contribute considerably to the development of the city and the market economy. However, in this case too, logical intentions and the aspiration to rectify an unlawful legacy came at odds with the very principles of lawfulness that were to serve as a basis for market economy and help attract investments. It is telling that increasingly frequent property disputes resulted in the government decision on an amnesty for suspicious property holders. On 4 August 2007, the aforementioned decree by the Mayor’s Office was abolished as well.

Relations of Saakashvili’s government with the media were strained too. Commenting on some of the aforementioned criminal cases, a judiciary branch representative said that, while trials used to be conducted in a proper manner, the state usually lost PR battles.<sup>216</sup> Overall, communication with the public and opponents was the young government’s most significant weakness. Communication skills of the power-wielding bodies were especially problematic. The government expected journalists to be more understanding and did not pay particular attention to staffing its public relations departments with professionals. The situation began to change in 2006-2007. In general, however, confrontation between journalists and government representatives was a characteristic trait of the post-revolutionary period. In a number of cases, confrontational discussions during a live broadcast or a behind-the-scene fistfight between a journalist and a politician occurred. Clashes with journalists were particularly typical for regions.

As mentioned earlier, confrontation that unfolded around the Imedi TV channel owned by Badri Patarkatsishvili was especially tense. Government representatives started boycotting Imedi’s talk shows, saying that Imedi aspired to discredit the government and fuel scandals rather than establish the truth. On 7 November 2007, after a police operation against a protest rally, an Interior Ministry special unit entered the building of Imedi and took it off the air.

Giga Bokeria criticized the Georgian media for being overly politicized and incompetent and cited interesting examples of how a number of media outlets had misled the public on various issues.<sup>217</sup> Court representatives complained that the media failed to convey the Supreme Court’s press releases properly.<sup>218</sup> As for Imedi, it often created an imbalance disadvantageous for a government representative in its talk show audience while the style of its talk shows encouraged scandals rather than understanding of the problems discussed.<sup>219</sup>

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<sup>214</sup> The 24 Saati newspaper, 20 April 2007

<sup>215</sup> Interview, February 2008

<sup>216</sup> Confidential interview, August 2007

<sup>217</sup> The 24 Saati newspaper, 20 April 2007

<sup>218</sup> Interview with Supreme Court Deputy Chairman Zaza Meishvili, 14 August 2007. As an example, we can use the 7 August 2007 issue of the Rezonansi newspaper which carried the human rights ombudsman’s specific statement and the Supreme Court press centre’s response to it. It was clear from the response excerpted by Rezonansi that the Supreme Court press centre drew the ombudsman’s attention to a specific article of the Constitution but the newspaper did not make it clear what the authors of the response wanted to say by this.

<sup>219</sup> Personal impressions from participation in the Imedi talk shows in 2005-2006. After the government had decided to refrain from participating in these talk shows and Imedi openly acquired the signs of the opposition’s mouthpiece, the anchors were frequently more benevolent towards the people, who “accidentally” happened to be on the programme and wanted to argue with the opposition. Overall, however, the view that Imedi was not just neutral but oppositionist was widespread among the public and political circles. The TV company owner’s personal attitudes towards the ongoing events contributed to this state of affairs.

As for taking Imedi off the air on 7 November 2007, the government's representatives highlighted the destabilizing and provocative statements disseminated by the TV channel while its owner was accused of orchestrating an anti-constitutional conspiracy. As an example of unacceptable statements, the government representatives cited a comment by the Kronika news programme host that the walls of a church do not seem to offer protection from special units. A government member said that this was a direct provocation targeting religious sentiments of the TV audience and an attempt to trigger further clashes in the city.

The government's assertion that there had been a conspiracy was substantiated by evidence.<sup>220</sup> There are sufficient grounds to talk about political bias of the Imedi TV channel too. In addition to the apocalyptic pictures systematically drawn by its talk shows and news programmes, Imedi's information and analysis programme Droebe had an interesting manner of working as well. It was permeated by a certain religious mood which came into conflict with the image of individual representatives of Saakashvili's government as non-religious people arguing with the Orthodox Christian Church and appealed to the conscious or subconscious religiousness of the mass audience. However, the pro-government Rustavi-2 channel could be accused of having been biased as well: Its owners and leading journalists are known to have had close ties with government representatives at different times. Most importantly, the arguments cited to suspend Imedi's broadcasts and especially the manner in which it was taken off the air did not prove to be convincing for international or local organizations working to protect human rights and the freedom of speech. Newly-appointed Prime Minister Lado Gurgensidze, who went to Brussels in December 2007, had to offer the European bodies explanations for the closure of Imedi as the first thing. The European Parliament president emphasized in conversation with him that he was happy about the promise that Imedi would resume its broadcasts.<sup>221</sup>

The positive and negative aspects of relations between the government and the media as well as the issues of protection of property rights are beyond the scope of the discourse on security policy or security sector. Nevertheless, these issues show the general traits of the Georgian socio-political system which affect all of its components. Hans Morgenthau said that the country's strength (and, correspondingly, its security – D. D.) is also determined by such factors as national morale and the quality of government. The former is linked to the public support for the government and the other to the government's ability to manage socio-political processes.<sup>222</sup> Due to the dilemmas posed by the internal and external security environment, as well as due to the government's mistakes, strained relations with the media and controversial incidents of infringement on property rights added to the instances of disproportionate use of force by law enforcers and the social cost of a radical personnel policy, thus creating a considerable sentiment of discontent with the government among the public. The political opposition which included quite a lot of radical opponents of liberal reforms took advantage of this sentiment in October and November 2007. High levels of unemployment rendered the situation especially tense of course. However, during mass protest rallies, the speakers emphasized mainly the issues of human rights and infringements on dignity.

The questions of media and private property affect the degree of human security and are linked to the establishment of the so-called good governance which is a combination of accountability, transparency and participation. At the same time, as noted in the introduction, it is not just international democratization and development institutions but also international security institutions and experts that are interested in these issues. Most importantly, however, the government used force in a disproportionate manner to deal with the dangerous sentiment of public discon-

<sup>220</sup> What matters here is the secret recording of Badri Patarkatsishvili himself and his fellow party member Valeri Gelbakhiani. See section 2 of this research, "Strategic Discourse and Security Problems in Georgia – Foundations of the Definition of the Sector", p. 28

<sup>221</sup> Reuters, December 5, 2007

<sup>222</sup> Hans J. Morgenthau, Revised by Kenneth W. Thompson, *Politics Among Nations: Struggle for Power and Peace*, McGraw-Hill, Inc. 1993, pp. 149-154



tent and especially to thwart the plans of those who had capitalized on this discontent and devised anti-constitutional plans. This is an issue directly linked to the security policy and security sector reform.

One can argue about the extent to which the force was disproportionate.<sup>223</sup> It is nevertheless a fact that, during the confrontation with protesters, along with the specially trained police subunits, the government used power-wielding bodies intended for other purposes as well.<sup>224</sup> The government's representatives have cited the magnitude of the threat, the need for its prompt aversion and insufficient number of special subunits as the reasons for this. Correspondingly, it is a matter of subjective consideration to decide whether the inexperienced government felt that it was facing yet another dilemma and involuntarily deviated from the democratic standards of security provision or whether human rights are of secondary importance to it. Given its sincere desire to be friends with the United States and the EU countries – which was the only option for Saakashvili's government, at any rate, against the background of complicated relations with Russia – the former opinion seems more convincing.

In addition to the dilemmas discussed earlier whose resolution by the Saakashvili government drew criticism both inside and outside the country, the security sector also had to deal with the legacy of several other important systemic problems in 2004-2007. Among these were inadequate separation of powers of the civil control institutions at the legislative level, frequent legislative changes and persistent contradictions in the legislation. Dual subordination of the defence and interior ministers has to be noted in this respect. On the one hand, they are subordinated directly to the president who is also the commander-in-chief of the armed forces. On the other hand, they are subordinated to the prime minister as head of the cabinet.<sup>225</sup> The problem of dual subordination might be considered an inherent quality of mixed political systems. At different times and in different forms, the existence of parallel subordination lines in the security sector has been considered incorrect in terms of civil control as well.<sup>226</sup> At the same time, it can lead to conflict between the executive and the representative branches and/or "oppression" of one branch by another in practical policy. In Georgia's case, the prime minister's real power is restricted due to the fact that, according to the Constitution, the president is authorized to dismiss the defence and the interior ministers bypassing the prime minister and can also preside over government sessions when special issues are discussed (the Constitution does not specify the criteria whereby an issue is to be considered special).

The problematic nature of this situation was pointed out by some MPs, who said that, even though the president is formally no longer the head of the government as was the case under Shevardnadze, he can preside over government meetings, dismiss some ministers and approve ministry charters. According to MPs, the president can present the government's successes as his own and evade responsibility for the government's mistakes.<sup>227</sup>

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<sup>223</sup> In his report, the human rights ombudsman raised the issue of the interior minister's responsibility and spoke of unlawfulness of the use of rubber bullets during the dispersal of the 7 November protest rally, inappropriateness of the use of special acoustic weapons, suspicions that several demonstrators had received firearm injuries and the fact that people had been beaten in a particularly brutal manner. See the *Rezonansi* newspaper, 18 March 2008. The government representatives have interpreted the law differently and they do not think that the use of rubber bullets was unlawful. At the same time, the government has denied that firearms were used and has said that disproportionate use of force only occurred in individual and isolated cases.

<sup>224</sup> The human rights ombudsman has said that the Defence Ministry and the Prisons Department aided the Interior Ministry. Officials have confirmed that the Prisons Department special unit and the Crime Police officers participated in the dispersal of rallies but have said that the Defence Ministry subunits were only deployed to patrol roads and guard facilities after a state of emergency had been declared. Personal interviews, November 2007

<sup>225</sup> See also Section 3 of this paper, *Georgian Security Sector Map*, pp. 53-54

<sup>226</sup> Samuel P. Huntington, *The Soldier and the State: The Theory and Politics of Civil-Military Relations*, Harvard University Press, renewed by Samuel P. Huntington, Twelfth Printing 1995; James Gow and Carole Birch, *Security and Democracy: Civil-Military Relations in Central and Eastern Europe*, Centre for Defence Studies, No 40, 1997

<sup>227</sup> Confidential interviews, August 2007



Among the flaws in the legislative and also the conceptual foundations of the security sector, a number of contradictions have to be noted between the Constitution and the law On Defence on the one hand and the National Security Concept, the Strategic Defence Review and the law On Military Reserve Service on the other. As mentioned earlier, according to the 6 February 2004 constitutional amendments, the president can deploy armed forces during a state of emergency before receiving an approval from parliament (but is obliged to inform parliament and obtain approval within 48 hours). The law On Defence, however, still requires parliament's preliminary approval for this as was the case prior to the February 2004 amendments.<sup>228</sup>

At the same time, both the National Security Concept and the Strategic Defence Review underscore that the military forces should be used to help the civilian authorities eliminate the consequences of an emergency, maintain public order or provide for citizens' security. The law On Military Reserve Service says that the reserve forces can be used both during a state of war or a state of emergency as well as in other special situations (underlined by the author – D. D.).<sup>229</sup> All of this is a Western standard: the army should help the civilian authorities in peaceful times too. However, the Georgian Constitution and the law On Defence only recognize the following purposes for the military forces: protection of the country's independence, sovereignty and territorial integrity and fulfilment of Georgia's international obligations.<sup>230</sup> Furthermore, the legislation does not specify the criteria for determining "special situations" mentioned in the law On Military Reserve. Neither does it say anything as to what the reserve should do at this time, whether parliament should be informed or why it is not obligatory to inform it the way it happens during a state of emergency.

The fact that military duty, albeit restricted, is fulfilled at the Interior Ministry and the Justice Ministry's Prisons Department appears to be in conflict with the Constitution as well. Article 101 of the Constitution stipulates that "defence of Georgia shall be an obligation of every citizen of Georgia; defence of the country and discharge of military service shall be a duty of every citizen being fit thereupon". Such wording does not make it clear whether it is a citizen's constitutional duty to defend the Interior Ministry's or the Prisons Departments' facilities, which occurs in practice.

Another noteworthy flaw in the security sector's legislative basis was the fact that the Georgian jurisprudence turned out to be too inflexible to divide the powers between the Defence Ministry and the Joint Staff of the Armed Forces.<sup>231</sup> Such division which does not imply a complete separation is desirable in order to provide for professional autonomy of the military.<sup>232</sup> According to the ministry's representatives, the balance between the Joint Staff's independence and its subordination to the ministry is being established in practice. In addition to the fact that the actual responsibilities of the Staff and its structure are gradually rendered similar to those of the corresponding bodies of the NATO member-states, the chief of the Staff is also the president's top military advisor and the president approves the charter of the Staff. However, due to the peculiarities of the Georgian legislation, the Staff should be either a corporate entity of the public law or a structural subdivision of a ministry. The law on defence attributes the latter status to the Joint Staff.

After the Rose Revolution, frequent change of the leadership as well as constantly amended legislative basis created problems for Georgia's security sector. Four defence ministers changed over this period of time. Up to 20 amendments had been made to the law On Military Duty and Military Service by mid-

<sup>228</sup> The law On Defence, Article 7, Paragraph 2

<sup>229</sup> The law On Reserve Military Service, Article 2, Paragraph 1

<sup>230</sup> The Constitution of Georgia, Article 98, Paragraph 2; the law On Defence, Article 7, Paragraph 1

<sup>231</sup> The Defence Ministry's representatives share this view. Confidential interview, April 2007

<sup>232</sup> Samuel Huntington, classical theoretician of civil-military relations, said that, in foreign policy, politicians should say "what" while the military should say "how"; in economics, the military say "what" and the civilians decide "how". Samuel P. Huntington, *The Soldier and the State: The Theory and Politics of Civil-Military Relations*, Harvard University Press, renewed by Samuel P. Huntington, Twelfth Printing 1995 p. 342. Correspondingly, such separation of responsibilities should be reflected in organizational and administrative differentiation in the Defence Ministry and the military institutions.

2007. It is interesting to note that a decision was made in October 2004 to reduce the term of mandatory service from 18 to 12 months. In February 2005, however, the amendment was suspended until January 2008 and the 18-month term of mandatory service was restored.

An overview of the problems facing the Georgian security sector shows that many objectives are yet to be attained in the process of reform. At the same time, the majority of the problems are in fact dilemmas, which excludes the possibility of a simple solution. Recommendations based on general principles of democracy or the government's political will alone will not suffice to immediately introduce the best democratic practices of security sector management in a transitional society facing numerous dangers or risks. Clausewitz's well-known maxim that fog is decisive in war and resistance offered by the environment or adversary requires constant corrections to be made in an even perfectly devised plan is applicable to the process of security sector reform as well. This could be another explanation for the frequent changes in the legislation regulating the term of military service or the sphere in general. The difficulty of these dilemmas is the reason for the positive and, to a certain extent, lenient nature of the International Security Advisory Board's (ISAB) findings.<sup>233</sup> They state that the Georgian government has coped well with the formation of strategic and conceptual foundations for the modernization of the sector. However, their implementation has just begun and limitations imposed by the territorial fragmentation, the current state of the economy and the lack of experienced public services need to be taken into consideration.

ISAB has said that the political will to facilitate reforms which is the main factor determining final success in the state-building processes was in place. It is also important that the report was prepared in early 2006 and there have been many developments since then in terms of the reform implementation. The level of professionalism of the security sector representatives and their ability to consider recommendations made by human rights organizations were improving. It is noteworthy that one of the sternest critics of the government from the local nongovernmental sector admitted in April 2007 that the government no longer resorted to "campaign-like" and "bloody" special operations, which he believed was the result of the pressure by international organizations.<sup>234</sup> However, the crisis of October and November 2007 indicated that there were flaws in the processes of reform implementation and improvement of human security environment.

The complicated and dilemma-like nature of the security problems can be used to explain, but not to justify yet incomplete nature of the reforms whose aim is to introduce democratic standards of both national and human security in Georgia. However, without this explanation, it would be impossible to optimize or harmonize the efforts of the governmental and nongovernmental institutions that are dealing with security issues.

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<sup>233</sup> ISAB Report 2006, 15 February 2006

<sup>234</sup> The Akhali Versia newspaper, 16-17 April 2007

## Conclusion and recommendations

Security sector reform and especially national security policy are not shaped solely by a state's domestic needs, vision and resources. The success of transitional countries in the democratization of the sector is to, a great degree, determined by the intensiveness of their relations with corresponding international organizations and programmes. According to a number of assessments, close ties with the EU and its interest in providing technical assistance to its eastern neighbour have facilitated democratization of Georgia's security sector and policy.<sup>235</sup>

The Georgian government as well as a large section of the political spectrum and the population link the country's external security and progress in the security sector reform to the integration with the North-Atlantic alliance. Membership of the alliance is viewed both as an impetus for domestic reforms and a guarantee of their irreversibility. The European Neighbourhood Policy Action Plan which has served as a conceptual and technical framework for Georgian-EU relations since 2006 is also considered to be a means promoting reform of the security sector and ultimately the integration with NATO.<sup>236</sup>

Discussion of the Georgian security issues would be incomplete without the inclusion of the agreement on the time frame for the withdrawal of the Russian bases from Batumi and Akhalkalaki signed by the Georgian and Russian Defence Ministries in late March 2006.<sup>237</sup> The time frame has been respected so far. The agreement reached by the two countries at the OSCE's Istanbul summit as early as in 1999 has therefore been almost implemented, albeit with great difficulty.

There are, however, two extremely significant problems in Georgian-Russian relations in the security sphere that have not been resolved so far: 1) disagreement on the situation in Georgia's conflict zones, which is also the main reason why the Georgian-Russian agreement on the closure of Russian bases has not been completed yet;<sup>238</sup> 2) Russia's opposition to Georgia's aspiration to join Euroatlantic structures. The two problems are not simply foreign policy challenges facing Georgia or the only ones that it faces as they affect the pace of Georgia's security sector reform and the prospects for its success directly.

It is not just about the fact that Georgian-Russian disputes and confusion in the conflict zones puts a constant strain on the Georgian security sector and impedes reforms. It may be more alarming that the Russian government's negative attitude to Georgia's Euroatlantic prospects has had a particularly strong impact on several European members of NATO. As a result, it is not the level of democratic reforms in the country aspiring to join NATO that these states are concerned with but geoeconomics and geopolitics, i.e. essentially, Europe's dependence on Russian energy resources and regional ambitions of the Russian political elite.<sup>239</sup>

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<sup>235</sup> *Democratising Security In Transition States*, Eds Katrin Kinzelbach and Eden Cole, UNDP, 2006, Printed by RENESANS, Slovak Republic, p.37

<sup>236</sup> The Georgian foreign minister underscored in conversation with representatives of the European institutions that effective implementation of the European Neighbourhood Policy Action Plan would improve Georgia's chances for integration with NATO. The meeting with Georgian Foreign Minister Gela Bezhuashvili and EU Special Representative for the South Caucasus Peter Semneby, European Policy Centre, 14 May 2007, Brussels, Belgium.

<sup>237</sup> The 24 Saati newspaper, 1 April 2006

<sup>238</sup> The Georgian side argues the 1999 Istanbul agreement is yet to be implemented in principle as it considers the status of the Russian base in Gudauta in Abkhazia to be uncertain. Russia has denied the existence of this base, stating that its territory is being used for the peacekeeping operation underway in the conflict zone. However, Russia has been unable or unwilling to ensure international monitoring of the Gudauta base within the framework of the CFE Treaty. It is noteworthy that the Georgian-Russian agreement reached in Istanbul is considered to be part of the CFE Treaty and the failure to implement it has caused a delay in the ratification of the entire agreement.

<sup>239</sup> Vladimir Socor, *Hard Debates at NATO on Georgian Membership Action Plan*, Eurasia Daily Monitor, March 11, 2008, Vol 5, Issue 45, The Jamestown Foundation

The Georgian government has emphasized that both the European Neighbourhood Policy Action Plan and the NATO Individual Partnership Action Plan are valuable for the implementation of domestic reforms in the country and consolidation of democratic statehood. Correspondingly, these formats of cooperation are valuable for Georgia by themselves. However, special attention that NATO and the EU pay to Russia's fears could cause frustration in Georgia, prompting speculation on double standards of the NATO members-states and reducing interest in certain aspects of the Western (especially European) guidelines for reforms.

It is hard to say how the security sector reform in Georgia will continue should Russia manage to block the process of Georgia's integration with NATO over a long period of time since foreign policy circumstances are no less important for reforms than a country's domestic political problems. It is also clear, however, that every significant step taken within the framework of the reform is always linked to a dilemma and has no alternative, given the fact that the final goal of the security sector reform is to strengthen national and human security.

Disruption of reforms regardless their social and political cost would be a major trump card in the hands of those who oppose Georgia's closer ties with NATO. Ultimately, modern international relations exclude the possibility of depriving a sovereign country of the right to make a foreign policy choice. For this reason, the Russian "veto" on closer ties between Georgia and NATO, will be overridden sooner or later provided Georgia does its "homework" well.

The "homework" implies continuation of the security sector reform as well as progress in the settlement of conflicts and general democratization of the country. Georgia remains a fragile political system whose democratic development is not an irreversible process. It is facing numerous domestic and foreign policy challenges. Most of these challenges, as stated in the previous section, are like dilemmas and are linked to security problems. Correspondingly, effective security policy and sector reform are preconditions to the country's democratization and essentially to its survival too. The future development of the security policy and sector should promote attainment of the following main objective: Maximum harmonization of security on the one hand and democracy and requirements of the rule of law on the other. As mentioned on more than one occasion earlier, the imbalance which was noticeable in 2004-2007 posed a systemic danger of destroying the boundary separating democracy and authoritarianism.

Security sector reform experts consider the Georgian case to be moderately successful: Oversight mechanisms have begun to work, civil society has become active, there has been an increase in transparency and the official will to intensify the reforms has been in place. It is noteworthy that Ukraine received relatively similar assessment among the CIS countries.<sup>240</sup> Neither have the intentional human rights organizations and institutions declared that Saakashvili's government was a dictatorship despite the fact that such assessments are being made by its political opponents. Nevertheless, there were instances of disproportionate use of force, problems of accountability and transparency, misbalance between the branches of power and confrontation between the government on the one hand and the media and civil society on the other. Correspondingly, whether it is the framework of the security sector reform or democratization of the country in general, the government needs to constantly prove that overstepping of the rule-of-law principle are regrettable exceptions rather than a general trend.

The Strategic Defence Review and the ISAB reports clearly state what else needs to be done in order for Georgia's main defence and security structures to become more stable and fully compatible with similar institutions of the NATO member-states. Many programs that were launched in this field in 2004-2007, such as the modern systems of human resource management, planning and programming and procurement, are still at the introductory stage. The communication of the whole sector with the public and the unsatisfactory work of public relations services deserve special attention: Reformist decisions as well as ups and downs of the struggle against organized crime and corruption angered the

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<sup>240</sup> *Democratising Security In Transition States*, Editors Katrin Kinzelbach and Eden Cole, UNDP, 2006, Printed by RENESANS, Slovak Republic, p. 33

public not because they were unacceptable in principle but because the public was unable to see or understand their meaning. Of course, the flaws in the communications strategy of Saakashvili's government cannot overshadow the flaws of the judiciary system – a fundamental weakness of the Georgian democracy that was highlighted at the NATO summit in Riga in 2006. A separate research is, however, required to determine where the truth about the Georgian justice system ended and the reality painted unilaterally by the revolutionary government's opponents began.

A fundamental question and also a lesson which can be drawn from the example of the Georgian security sector development is as follows: Is it possible for the government that came to power as a result of a revolution to carry out modernization, lay foundations for liberal democracy, confront domestic and foreign threats facing the country and, at the same time, remain within the framework of lawfulness and strictly follow the principles of good governance – participation, transparency and accountability?

The answer to this question and the meaning of the lesson are a matter of subjective perception and taste rather than an objective and precise analysis. It has to be noted, however, that in transitional societies immediate implementation of all normative requirements of the security sector reform could lead to the loss of power. Correspondingly, it is necessary to decide whether the exact implementation of individual normative standards of good governance in a specific situation could cause an opposite effect, that is to say, facilitate the return of anti-liberal, criminal and corrupt forces and practices. Incidentally, civil-military relations researchers have always focused their attention on the difficulty of adjusting a normative attitude to specific circumstances.<sup>241</sup>

The Georgian example has also demonstrated in practice that it is hard to determine the limits of the security policy and sector. Naturally, this stems from a broader understanding of security in contemporary international relations and the controversial convergence of military and police responsibilities. However, the Georgian example is a more far-reaching one: The issues that are a matter of ordinary law-enforcement and everyday politics in stable liberal democracies, whether it is combating crime, relations between the government and the media or street protests, become more like a matter of security and survival in fragile transitional democracies. The situation is complicated by a peculiar trait of political culture: Antagonistic and zero-sum-game relations between political opponents. Correspondingly, political discussion of any issue has usually been accompanied by epithets typical for the security discourse, such as “foreign agent”, “traitor”, “dictator” or “misanthrope”.

Ultimately, the controversial relationship between security on the one hand and the rule of law and human rights on the other is, once again, the main problem which distinguishes the security policy and sector of a transitional democracy like Georgia from those of stable liberal democracies. This conflict has been present in all countries. However, in places where the foundation and tradition of democracy are weak and the government has rarely or never changed through elections a suspicion always arises that human rights are restricted for the sake of the government's security rather than national or human security. The Eastern parable about a knight who defeats a dragon only to become one himself offers a fitting metaphor for the problems of transitional democracies. It is this very danger that the fundamental reform of the security sector is designed to avert. However, as noted earlier, there are numerous objective difficulties in the course of reform that create dilemmas and a normative attitude is no less dangerous than inaction.

Before the 2003 revolution, the Georgian government was notable for its inaction. The state was incapable of fulfilling its key functions. This was the reason why Shevardnadze's rule led to a revolution. Saakashvili's government acknowledged the many tasks facing the state and made the national security

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<sup>241</sup> Some authors highlight the inevitable gap between the normative instructions and legal framework defining principles of democratic control over military forces on the one hand and the practice of implementation of this control on the other. See *Civil-Military Relations in Europe Learning from Crisis and Institutional Change*, Edited by Hans Born, Marina Caparini, Karl W. Haltiner and Jurgen Kuhlmann, Routledge, 2006, p.3-4



system and policy a priority. It did not reject human security as the security equivalent of human rights: The “crusade” of Saakashvili’s government against organized crime and criminal culture in general can be considered part of both national and human security policy. Nevertheless, the government’s opponents often state that it does not matter for a citizen whether his or her rights are threatened by a criminal racketeer or a policeman wearing a uniform and they cite the high-profile instances of violence perpetrated by the police.

In dictatorships and other authoritarian forms of government, the question of identity, origin and status of those who violate human rights is certainly a secondary one. In such regimes, organized crime is often the government’s ally. However, if a country recognizes political pluralism and closely cooperates with the key human rights institutions of the Euro-Atlantic community, the chances of individual citizen suing a violent policeman or the state as a whole and finding justice are much greater than in a confrontation with mafia.

On 9-10 February 2007, an international forum called “Human Security Conference – Focus on Georgia” was held in Tbilisi. It was hosted by the Georgian Foundation for Strategic and International Studies and London-based Caucasus Policy Institute. Representatives of the Georgian government, the political opposition and the nongovernmental sector participated in the forum. Renowned international experts in security and politics and the diplomats accredited in Georgia also attended the forum. The findings of international experts derived as a result of intensive exchange of opinions can be summarized as follows: There has been progress in the development of the Georgian security policy and system but the new Georgian state is only a few years old. It takes time to consolidate the rule of law, which makes mistakes and irregularities inevitable. The main criterion suggested by international experts for the assessment of the processes taking place in the security and law-enforcement sphere was as follows: Overall, is the population better protected by the state today than it was before the revolution or has the situation worsened in this regard? It was also said that democracy-building lags behind state-building in Georgia and, against the background of successes achieved in terms of human security, problems remain in terms of job security, protection of property, social protection and efficiency of courts.<sup>242</sup>

The opinions expressed at this forum are essentially guidelines both for assessment of the Georgian security sector reform and for elaboration of recommendations for the future. These guidelines coincide, to a great extent, with the analysis presented in this paper. It is thus possible to draw up several general recommendations that, while taking into consideration Georgia’s specific circumstances, could supplement the requirements concerning further improvement of the fundamental mechanisms of the rule of law, good governance and democratic civil control:

1. While undertaking to strengthen the state – which undoubtedly implies generation of corporate culture and high morale in the army and the paramilitary, police and other law-enforcement institutions – greater attention should be paid to the introduction of behaviour ethics consistent with democratic norms. Transparency, accountability and the rule of law all of which are essential to security sector reform, democratic civil control and civil-military relations should be founded upon proper values and a corresponding culture of conduct. Steps in this direction have certainly been taken and it is possible to cite the examples of the modules introduced in the Police Academy, the establishment of human rights subunits in law-enforcement bodies and the galvanization of the intradepartmental inspections. The legal and conceptual documents regulating the security sphere refer to democratic principles and values. It seems, however, that there is room for improvement. Georgian military or policemen are the children of the same society where professionalism, respect for human rights and tolerance were quite unusual values only a short while ago. This is one of the factors behind the instances of disproportionate use of force by law enforcers and the difficulties still encountered during investigation of these incidents.

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<sup>242</sup> GFSIS-Caucasus Policy Institute “Human Security Conference – Focus on Georgia” 9-10.02.07

2. On the other hand, more needs to be done to ensure “job security” for those employed in the security sector. The discretion of the top circles in hiring or dismissing employees should decrease in parallel with the improvement of professional ethics. Special institutions to protect the rights of soldiers, officers and policemen need to be formed as well. The need to completely depoliticize these bodies should not become the reason for excessive restriction of their civil rights. It would be desirable to facilitate establishment of trade-union-style organizations tested in a number of Western countries in the security sector of the Georgian state.
3. Public relations remained a weakness of the reforms implemented in the security sector in 2004-2007. Until recently, relations with the public were mostly limited to advertisement videos or events and/or took the shape of isolated campaigns. There are interesting initiatives such as the formation of advisory councils made up of the representatives of civil society in various parts of the sector and the training in communication skills for the representatives of security agencies. The government has gradually acknowledged the significance of the problems in the relations with journalists and NGOs. It is clear, however, that a lot remains to be done in this field. As reforms are being implemented, it is also necessary to constantly explain them, which is impossible without regular interaction and informed debate.
4. The media and the nongovernmental sector, for their part, need some recommendations as well. The security sector reform is the government’s responsibility. However, the reform implies participation, which requires knowledge of issues and professionalism among the “participants”. Just like the government, the active part of the public and the journalists need to realize how sensitive the security topic is and how much it depends on subjective perception. The nongovernmental sector needs to be critical and outspoken about the processes unfolding in the security sphere. However, if the pro-Western course and integration with NATO is more than just the government’s whim, disputes with the government must be combined with thematic cooperation. There are classified parts in any country’s security sector. Law is violated in all countries too. The media and the civil sector should understand that the government’s readiness to react to unlawfulness and to explain the reasons for classifying certain types of information is essential to their assessment of its activities.
5. The government cannot be the only culprit in the antagonistic relations between the government and the opposition. A responsible opposition needs to do more to distinguish between the struggle for power and the sector’s action programmes (politics vs. policies), and to show more enthusiasm in terms of participating in these programmes and understanding them.
6. The latter, however, is virtually unimaginable unless the opposition starts playing a greater role in the parliamentary oversight of the security sector. To this end, more needs to be done to introduce the practice of parliamentary investigation commissions. It is essential to reach a consensus over the inclusion of an opposition representative in the Group of Trust of the Committee on Defence and Security.

A lot remains to be done in the process of security sector reform to eliminate legislative flaws and shortcomings of management. All of these are details but some are the ones where the “devil” is hiding: In democracy, procedural nuances are no less important than the recognition of principles of human rights and the rule of law. However, sensitivity to procedures and the speed dictated by security needs are the two imperatives that are hard to reconcile, which once again reminds us of the security dilemma faced by young transitional democracies. Just like the specific and largely post-modern problem of Georgia’s security – excessive use of force by a liberal government against the background of democratic rhetoric voiced by anti-liberal forces – this dilemma is hard to resolve without a principled support of the international community. Given that politics is the art of possibility and fragile statehood could fall victim to idealism or maximalism, it would be desirable for NATO and the EU to make Georgia a test site for mutual cooperation. This would serve as a guarantee for combining traditional

and “soft” security policies as well as for a further democratization of Georgia’s state security institutions that are facing foreign and domestic threats. Such cooperation could become an interesting precedent of how differences are resolved within the Euro-Atlantic sphere itself.

The security sector reform is underway in Georgia. Meanwhile, Georgia has increased its defence budget a few times, has strengthened the combat potential of its armed forces and is actively participating in the mission in Iraq together with the United States at a time when the European allies of the United States show little interest in this operation. A number of foreign observers have expressed doubts in the mutual compatibility of the aforementioned. There are assessments, stating that the United States is interested solely in securing control of oil fields and is busy promoting its geostrategic interests in the region, while the Georgian government is a tool of this policy and, at the same time, a servant of its own Realpolitik ambitions. Criticism of a simplified understanding of the US foreign policy interests would require a separate article. As for US-Georgian partnership, it has to be noted that the national interests of the two countries could coincide in an absolutely natural manner. At the same time, US assistance to Georgia is special not only in terms of the generation of strength of the latter’s statehood but also in terms of reforms and democratization. This can be proved empirically. However, the criticism levelled at the intentions of the United States or the Georgian government’s traditional state interests and the talk about their incompatibility with human security or sector reform is also incorrect from an epistemological point of view. There is no politics or state and essentially nothing to reform without generation and protection of national interests. Despite fundamental differences in terms of approaches or priorities, national security and human security are only possible if they coexist – at least until the human rejects the interconnection between national identity and politics for good. The Georgian example demonstrates this once again and prompts us to assume that idealism or an attempt to immediately introduce best democratic practices without taking the circumstances into consideration could be a threat by itself.